

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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STATE FARM MUTUAL AUTOMOBILE :
INSURANCE COMPANY, *et al.*, :
:
Plaintiffs, : 18-CV-00289 (ILG)
:
v. :
:
July 17, 2019
JULES PARISIEN, M.D., *et al.*, :
:
Defendants. :
:
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TRANSCRIPT OF CIVIL CAUSE FOR HEARING
BEFORE THE HONORABLE STEVEN TISCIONE
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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(Appearances continued on next
page.)

Proceedings recorded by electronic sound recording,
transcript produced by transcription service

APPEARANCES (CONTINUED):

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1 THE COURT: Be seated. Civil cause for a motion
2 hearing, 18-CV-0289, State Farm Mutual Automobile Insurance
3 Company, et al., v. Parisien, et al.

4 Counsel, please state your appearances for the
5 record.

6 MR. MARKS: Good afternoon, Your Honor. Jonathan
7 Marks on behalf of plaintiff State Farm.

8 MR. COOK: Christopher Cook on behalf of plaintiff
9 State Farm.

10 MR. FURMAN: On behalf of the professional
11 defendants, I won't go through the list if that's acceptable
12 to Your Honor.

13 THE COURT: That's fine.

14 MR. FURMAN: Abrams Fensterman by Mark Furman.

15 MR. BOWERS: On behalf of defendant Quality Custom
16 Medical Supply, Nicholas Bowers.

17 MR. FISHER: And on behalf of the other DME
18 defendants, Fisher & Fisher by Andrew S. Fisher.

19 THE COURT: All right.

20 [Pause in proceedings.]

21 THE COURT: Well, you were certainly busy while I
22 was out.

23 [Pause in proceedings.]

24 THE COURT: I don't even know where to start.

25 [Pause in proceedings.]

1 THE COURT: So I have a motion for sanctions for a
2 default judgment against the DME defendants. What's the story
3 with the production that's never happened?

4 MR. MARKS: Okay. So, Your Honor, so with respect
5 to the DME defendants, we're waiting on production of
6 documents. We're waiting on responses, written responses to
7 document requests. We're waiting on answers to
8 interrogatories.

9 As the Court will recall, you had ordered that these
10 be completed on four separate occasions setting dates for them
11 to be completed. You've warned that sanctions would be issued
12 on three separate occasions. On two separate occasions, you
13 warned that if they are not completed by a date certain, you
14 would enter a default judgment. You've previously issued an
15 order imposing fees and costs for failure to get those done.
16 You also issued an order -- our brief was actually -- a motion
17 on this was filed on June 20. You ordered the response to be
18 filed by June 27. A response hasn't even been filed for that.

19 So, we have just -- we regret finding ourselves in
20 this situation. And we don't want to be in the situation
21 because, you know, we have a personal relationship with
22 counsel and we understand the dilemma. But we don't know what
23 to do. We're trying and trying and it just simply is a
24 complete and total abandonment of any presentation or any
25 response of defense. And the Court keeps issuing orders,

1 keeps issuing warnings that there are going to be consequences
2 including up to default and yet nothing is happening and this
3 is where we are.

4 And so we are really at a point where we don't know
5 what else to do other than seek the entry of a default
6 because, you know, we think that the standards at this point
7 have been met. You know, we could have this for over a year
8 and so that's why we find ourselves in this situation, Your
9 Honor.

10 MR. FISHER: Three of the entities as we have
11 discussed previously were owned by individuals who are
12 somewhere in the wind, haven't been able to -- plaintiff
13 hasn't been able to locate them. We haven't able to locate
14 them. As I've explained to the Court a couple of times, Mr.
15 Balson [Ph.] who owns AB Quality and another DME thought he
16 was buying the claims of these three through a Dr. Arguelles.
17 He's been operating on that premise. He was deposed. He
18 basically said, you know, I was on active military service.
19 My wife was running the business. I've tried to familiarize
20 myself with what went on, but you're better off talking to my
21 wife.

22 Immediately after that deposition, the plaintiffs
23 moved for a default. Mr. Balson said I've had enough. I've
24 had enough. I can't answer interrogatories. I can't answer
25 discovery demands with respect to the three companies that are

1 gone, with respect to my own companies as he testified in his
2 deposition. When I shut them down, I didn't retain any paper.
3 I didn't know I had to, and I didn't keep the paper.

4 So we can't comply with the discovery demands. We
5 have told them we've given you every document that we could
6 conceivably locate. Mr. Balson's wife did a search. She
7 found some documents. We produced every single one of the
8 documents that she was able to find, and Ms. Balson has
9 testified that there are no other documents in his possession
10 or control. And so he said I've had enough. I'm tired of all
11 these motions. I'm tired of being politely threatened because
12 I was a 30(b)(6) witness and I couldn't answer some questions.
13 In fact, I couldn't answer many questions. But I'm just tired
14 of this, and I don't want to be further indebted because of
15 this. And I've given up any hope of recovering on any of
16 these claims in the future, so why should I incur more debt to
17 do this.

18 And so if there's going to be a default, so be it is
19 his attitude. But he's just plain worn out, Judge, and he
20 doesn't see any sense to remaining in this litigation.

21 MR. MARKS: So, Your Honor, I guess what I'm hearing
22 is that on behalf of the five DME defendants, I'm hearing more
23 or less a concession, go ahead and enter a default against the
24 five DME entities. That appears to be where we are. When he
25 says enough, meaning I don't want to do anything more, well,

1 that's fine. You don't have to do anything more, but you're a
2 defendant in the case. You have obligations to participate in
3 the case. And if that's your position that you're not going
4 to participate, you're not -- that's fine. But there are
5 legal consequences of the failure to participate.

6 MR. FISHER: And I have explained that to Mr. Balson
7 in full detail. He's getting ready to be deployed again which
8 is another factor in this. His wife has had enough. He's had
9 enough, and so if there's going to be a default judgment
10 against the five entities -- three of them he cares nothing at
11 all about and the two defunct companies that he cares very
12 little about -- so be it, Judge.

13 THE COURT: Okay. I am going to recommend the
14 district court enter a judgment of default against those five
15 defendants. And I suppose good luck collecting on.

16 MR. MARKS: And that's fine. And let me just raise
17 and now there is a separate issue. A default judgment does
18 not excuse, and we can proceed through this. We can do this
19 now by a subpoena as they become nonparty. But It does not
20 exclude an obligation to comply with a 30(b)(6) deposition.
21 So we noticed a 30(b)(6) deposition. A witness was produced.
22 At that -- Allen Balson [Ph.].

23 Now under the Rule 30(b)(6), you got to tender a
24 witness with knowledge and if that person doesn't have
25 knowledge, they have to educate themselves. They have to

1 figure out whatever it is the knowledge that they can figure
2 out, and they have to do something. Mr. Balson did absolutely
3 nothing. As he testified at his deposition, did you do
4 anything to gather information for this deposition, no. He
5 didn't know anything, and that's fine. If Mr. Balson doesn't
6 know anything, that's fine. But he either had -- they had two
7 choices. One, he could learn what he needed to learn or he
8 could tender another witness. And he said at his deposition
9 that other witness is his wife.

10 So the default is fine. We still need a -- we still
11 -- the conduct, however, of the Durable Medical Equipment
12 entities is still relevant to the rest of the case because the
13 professional defendants --

14 THE COURT: Have you tried to depose her?

15 MR. MARKS: We have not tried to depose her. So
16 we're happy to go ahead and we will make an attempt to depose
17 her, and if that's --

18 THE COURT: I mean he's the one who said that she
19 knows more about the company, so if you want somebody who
20 knows something about the company, it sounds like she might be
21 the person to depose.

22 MR. FISHER: And, Your Honor, in fairness and I
23 think Jonathan will agree with this, we discussed the fact
24 that we would produce Ms. Balson for the deposition, but then
25 they made the motion for the default. And he said why am I

1 being nice about anything. You know, why should I offer up my
2 wife.

3 And as far as his role as a 30(b)(6) witness which,
4 frankly, Mr. Marks took many attempts to convince him that he
5 should know more than he does by telling him he's a 30(b)(6)
6 witness, but the truth of the matter is he looked at the
7 subpoena, he didn't know the answers to the questions so he
8 ascertained the facts as best as he could and the facts that
9 he could ascertain were in the possession of his wife. So
10 they jumped the gun by making the motion for the default.
11 They pushed him to making a decision as to whether to proceed
12 further or not. And, you know, if they now want to serve Ms.
13 Balson as a nonparty witness, I presume that she'll do
14 whatever her legal rights entitle her to do at the time they
15 serve that subpoena.

16 MR. MARKS: Well, we have attempted to arrange the
17 deposition of -- to continue the deposition of the 30(b)(6)
18 witness and to take the deposition of Ms. Ksenia and we were
19 told not going to do it because you've moved for a default.

20 MR. FISHER: Right.

21 MR. MARKS: So, all right. So if what I'm hearing
22 is that we intend to go forward then the deposition of Ms.
23 Ksenia and then we'll -- will counsel accept service of the
24 subpoena on her behalf?

25 MR. FISHER: I'll have to find out if I'm authorized

1 on that. I don't represent her individually yet, but I expect
2 I will. But I don't yet have authority.

3 MR. MARKS: All right. We'll go forward with that
4 deposition.

5 MR. FISHER: Are you going to do that before or
6 after you try to take the deposition of the guy who owns a
7 barber shop? I mean, Judge, there's a point at which State
8 Farm's discovery approach becomes rather absurd. As Mr.
9 Furman pointed out --

10 THE COURT: It's easy to say that and yet I look at
11 the transactions and none of them make any sense.

12 MR. FISHER: Which transactions are you talking
13 about?

14 THE COURT: The transactions where your -- well, and
15 that's not your witness, but, you know, you have a nonparty
16 who claims she has no connection to any health care entities
17 and then later says that she worked for them cleaning.

18 MR. FISHER: And filing papers.

19 THE COURT: And yet makes \$200,000.

20 MR. FISHER: No, sir; not 200,000. I believe it's
21 100,000 and I believe it's over seven years. Seven years.

22 THE COURT: Well, someone who had seven years of
23 contact with multiple health care agencies should never have
24 represented that she had no connection to any health care
25 agencies.

1 MR. FISHER: No connection other than. I mean she's
2 not involved in the health care agency. She's a functionary.

3 THE COURT: Okay.

4 MR. FISHER: She cleaned toilets. She was
5 desperately in need of money, Judge. It's a single mother
6 with two children approaching college age. Her own business
7 was nonexistent. They've raised something about a company --

8 THE COURT: Well, then why did none of the
9 defendants have any of those records?

10 MR. FISHER: Excuse me.

11 THE COURT: Why do none of the defendants have any
12 of those records?

13 MR. FISHER: I don't know what the professional
14 defendants did or didn't do, have or didn't have. What I'm
15 talking about, Your Honor, are the facts related to some of
16 these allegations that have been made by State Farm in which
17 they say significant amounts of money. Significant amounts of
18 money over a seven, eight, ten-year period are much less
19 significant. If somebody got \$200,000 over seven years, so
20 they got what, a basic \$15 an hour salary?

21 I mean you're talking about claims --

22 THE COURT: I don't know. Maybe if your client's --
23 no, again, not your clients. This is the problem. There's
24 too many defendants.

25 MR. FISHER: Just theoretically, Your Honor --

1 THE COURT: But, you know, they're not identified as
2 employees.

3 MR. FISHER: Right.

4 THE COURT: If there are employment records, maybe
5 some of this would make any sense.

6 MR. FISHER: Maybe they're independent contractors.

7 THE COURT: I don't know. But none of this stuff is
8 making any sense, that's my point.

9 MR. FISHER: But has State Farm put forward a single
10 fact that demonstrates this unpleaded theory of the case that
11 they're pursuing because they're not pursuing the complaint.
12 They're pursuing some other kind of case that they may or may
13 not bring in the future for some purpose.

14 THE COURT: They're pursuing a RICO claim which is
15 in the complaint.

16 MR. FISHER: They say the target of all of this
17 discovery is a woman by the name of Tatiana Rybak. She's not
18 a party to the action, and they've got I believe one check
19 that predates the allegations of the complaint for a thousand
20 dollars that was paid to her by another nonparty, a thousand
21 dollars. And then they premise everything on we suspect, we
22 think, we allege.

23 But you asked the question once other than the fact
24 that so-and-so got paid, what evidence do you have that he was
25 involved in the fraud. You could ask that same question about

1 each and every person who was served with a third-party
2 subpoena. They've gotten all the bank records. They know
3 where the checks are. They've issued lists and lists of
4 checks that they want people to explain, and they refuse to
5 allow for the fact that there's something going on here that's
6 different than what they imagined.

7 And they refuse to recognize the fact that there is
8 a connection point other than Tatiana Rybak between and among
9 all of these people and it's a Dr. Arguelles. And, in fact,
10 Mr. Balson testified at his deposition, at his 30(b)(6)
11 deposition, that he was asked to purchase the claims by Dr.
12 Arguelles, that he dealt through Dr. Arguelles. Dr. Arguelles
13 is a house doctor at the Fountain Blue Hotel. So that
14 explains the relation -- and used to live in an apartment
15 house I believe with some of the other nonparties.

16 So that explains a connection point that's so
17 different from what they keep throwing forth in the Court that
18 somehow this boogeyman Tatiana Rybak is behind all of this,
19 and yet they haven't gotten any evidence that a single dollar
20 passed between any of the persons that they got bank records
21 from and Tatiana Rybak except I believe for a thousand dollars
22 that predates the allegations of the complaint and has an
23 innocent explanation.

24 And parenthetically, they made much ado in their
25 recent letter about a 3D company that was started by Vasila

1 Queen. Yeah, she did. It was a concierge birth business, and
2 she tanked its base from Tatiana Rybak or from an entity that
3 Tatiana Rybak has an interest in. That company did absolutely
4 zero business and was never dissolved as far as I know because
5 Vasila Queen didn't want to waste the money that was hard-
6 earned by her to dissolve the company. Big -- I almost said a
7 bad word.

8 It's mind-boggling, Judge, that based on no evidence
9 that they're pursuing this case in a direction that is
10 alienated from the complaint and at some point I would think
11 that the Court would want to rein them in a little bit, but
12 that's just me, Judge.

13 MR. MARKS: Judge, I don't know how much of that you
14 need me to respond to. But no evidence. We have piled on the
15 evidence that establishes that there is a scheme here clearly
16 to funnel money very likely of Tatiana Rybak. He says are you
17 going to depose the barber now. We're not trying to depose
18 the barber. We're trying to depose the defendants, the named
19 defendants, the Durable Medical Equipment providers.

20 And what do we get? We get an individual who walks
21 in who is 30(b)(6) witness despite his obligations under the
22 Federal Rules of Civil Procedure 30(b)(6) in which he's
23 supposed to know something about the Durable Medical Equipment
24 providers he's there to testify on behalf of, two of which he
25 claims to own on paper. And he doesn't know anything. He

1 doesn't know who the employees are. He doesn't know who their
2 shareholders are. He doesn't know where the mailboxes are.
3 He doesn't know anything whatsoever about durable medical
4 equipment. He couldn't pick out a piece of durable medical
5 equipment if it were sitting in front of me. He has no idea,
6 okay.

7 What he does know is that Dr. Arguelles, everybody
8 points to Dr. Arguelles because Dr. Arguelles has been doing
9 business with Tatiana Rybak back since 1999 when Tatiana Rybak
10 admitted in a guilty plea to conspiring with Tatiana Rybak in
11 the illegal ownership and control of a medical clinic. So --

12 MR. FISHER: Your Honor, that case --

13 MR. MARKS: I'm speaking now. I let you speak.
14 It's my turn.

15 MR. FISHER: Okay, John.

16 MR. MARKS: Thank you.

17 MR. FISHER: I'll wait for you.

18 MR. MARKS: All right.

19 MR. FISHER: Just I want to clear up your
20 misrepresentation to the Court.

21 THE COURT: I'll give you an opportunity to speak.
22 I don't typically cut anybody off.

23 MR. MARKS: Thank you. All right. And so what we
24 -- and so every time we turn around, everybody trots out
25 Tatiana Rybak who right now is in her nineties, right.

1 MR. FISHER: No. You said Tatiana Rybak. You mean
2 --

3 MR. MARKS: I'm sorry, Dr. Arguelles who's now in
4 her nineties, right. Dr. Arguelles is the doctor we brought
5 out to say, okay, Dr. Arguelles is the one we're going to trot
6 on and say, oh, it's Dr. Arguelles. So Dr. Arguelles called
7 and said do you want to buy these receivables for \$2,000 and
8 Balson pays \$2,000 in cash. There's not a scrap of paper to
9 reflect these transactions. It made absolutely no sense
10 whatsoever.

11 And now, Vasila Queen who's got all this money,
12 what's her story? Oh, her story is, yeah, it's Dr. Arguelles.
13 So now Dr. Arguelles is going to be the fall person. Look,
14 all of this at the end of the day is interesting arguments
15 that we may here one day in a courtroom at trial, but that's
16 not the point. The point is this is discovery.

17 And what we have here is we have the Durable Medical
18 Equipment defendants who have produced nothing. If they have
19 a defense, if this is his story, answer an interrogatory, come
20 into a deposition and say what Mr. Fisher is saying in here
21 under oath. Mr. Balson could say it. Somebody can say it
22 under oath. Put up your evidence, but they've put up nothing.
23 Nobody's producing everything. The professional defendants
24 haven't produced, have not produced anything that establishes
25 any of this. Where is this evidence?

1 So I say look, at the end of the day, this isn't
2 about proving our case. This is about where is our discovery
3 right now. That's what we're talking about. We're entitled
4 to this. This is called for by the complaint that we have
5 filed. We have heaped on this Court in numerous pleadings
6 demonstrating all of the issues that are associated with these
7 payments. We have more than established the basis to be
8 entitled to this discovery, and we should be allowed to go
9 forward with it.

10 MR. FISHER: Judge, let me clear on thing up
11 immediately because it's a matter of public record. Whatever
12 happened back in 1990 when Ms. Rybak admitted to certain
13 conduct is no longer of any moment because her conviction was
14 vacated approximately two years ago, two and a half years ago
15 on constitutional grounds, failure to have the assistance of
16 effective counsel. So she's no longer a convicted felon.
17 She's a misdemeanant of a B misdemeanor, a B misdemeanor.

18 She has acquired U.S. citizenship despite that
19 minimal conviction. She waited to apply for citizenship until
20 after we were successful in vacating her conviction, and then
21 she applied for citizenship immediately and has, as I said,
22 been awarded citizenship. That's number one.

23 Number two, Mr. Balson prepared himself as best as
24 he could. As I said, he looked at that subpoena and he came
25 prepared to tell them where they could find the information.

1 And I know I'm repeating myself, but they jumped the gun.
2 They made this motion for a default and they pushed him into a
3 corner. And now they're saying, oh poor us, we need this
4 discovery. Well, they could have had it if they had
5 cooperated, but instead they came running to you fourth time,
6 fifth time, ninth time. And that's where Mr. Balson said I'm
7 going away, I'm going back on active duty and I'm going to
8 have to deal with motions in this stupid case where I really
9 have an almost insignificant financial interest at this point.
10 To hell with it.

11 And that's it simply. They want to -- and as I
12 said, if they want to subpoena Ms. Ksenia, I guess she'll do
13 what she can do, whether it's me or some other lawyer. And
14 with respect to -- you know, but the main point is, Judge,
15 they keep coming back to you with four-page letters, five-page
16 letters in which they make all of these inflammatory
17 allegations, none of which relate to the complaint and none of
18 which they have a scintilla of evidence to establish. It's
19 just we think.

20 And they have all the bank records of everybody.
21 They've subpoenaed banks. Some people have given their tax
22 return -- their bank account information voluntarily. They
23 got tax returns through subpoenaing an accountant who gave
24 them records that they now I think are complaining to Mr.
25 Furman that he didn't produce what they already have.

1 I mean come on, Judge. When does it get abusive?
2 When is it enough -- when is enough enough when they have
3 nothing? Ask them point blank, what evidence do you have to
4 keep going down this path, and I bet you dollars against
5 doughnuts that the only answer they're going to have is these
6 people got money. Where did the money go? They don't know
7 that. Maybe it went for their living expenses.

8 They talked about two witnesses who took the Fifth
9 Amendment. Yes, they took the Fifth Amendment on advice of
10 their counsel for whatever reason he decided that they needed
11 to protect themselves. But when you look at the amount of
12 money that those people got over a ten-year period of time,
13 you're talking about a modest salary for a clerical worker.

14 I mean it's as plain as -- I hate to say noses on
15 faces because some of them are not plain, but it's as plain as
16 -- you know, as anything could be that they're chasing around
17 doing all this discovery, discovery, discovery, discovery,
18 discovery. And I challenge them -- I challenge them to make
19 an offering of proof at this point as to why they should be
20 allowed to continue down that path.

21 And may I remind the Court we made a submission of
22 papers with respect to Les Levine [Ph.], which they also refer
23 to in one of their letters. And we're waiting on your with
24 respect to that.

25 MR. MARKS: I can respond to that. We can go back

1 and forth. It's not constructive. The only point is speeches
2 from Mr. Fisher on why there's evidence or no evidence are
3 irrelevant. His clients have decided to take a default.

4 MR. FISHER: Yeah.

5 MR. MARKS: Meaning there's going to be a judgment
6 against them, meaning there's going to be a judgment against
7 them based on the allegations in the complaint, meaning the
8 complaint, the facts alleged in the complaint are going to be
9 accepted as true and we're going to have a default against
10 them. So he can howl at the moon all he wants, but as of
11 right now, his clients have decided not to defend the
12 complaint.

13 Now, maybe they've decided not to defend the
14 complaint because they've had enough. Maybe they've decided
15 not to defend the complaint because Mr. Balson's going back to
16 wherever he's going back to. Maybe they've decided not to
17 defend the complaint because they've got no defense. Maybe
18 they've decided not to defend the complaint because this is
19 part of a strategy to prevent us from getting any more
20 information. It doesn't matter.

21 All that matters is the case as to Mr. Fisher and
22 his clients is over. And [indiscernible] -- well, there is
23 going to be a judgment as to liability based on the
24 allegations of this complaint against his clients. And so the
25 liability portion of the case as to his clients is over. His

1 time for speeches, his time for evidence, his chance to
2 present that, he's giving it up. It's done. So it's all well
3 and good, but it's done.

4 MR. FISHER: And I'm looking forward to the damages
5 phase of the case because I think that State Farm will be
6 hard-pressed to establish that they were damaged one dollar by
7 virtue of the conduct of the Balson-related DMEs. The other
8 three, they've been out of business for so many years, there's
9 no principals involved. It's just silly to pursue them, but
10 you know what, I guess that's what makes horse racing.

11 THE COURT: I'm recommending default against the
12 five entities. If you want to subpoena Mr. Balson's wife
13 since she appears to have some information about the
14 companies, go ahead and do that.

15 Moving on, you also asked for an order to show cause
16 against Alexander Almonte for failure to comply with the
17 subpoena and the Court's order. What's still outstanding?

18 MR. MARKS: So, and, Your Honor, this may be
19 premature because we just filed -- our motion has not been
20 served on him yet, so let me just sort of remind the Court
21 there were four or five nonparties that were the subject of a
22 motion. All of the other ones that were -- and you issued an
23 order saying they all needed to comply by a date certain. All
24 of the others fully complied. Mr. Almonte is the only one who
25 has not, and then he went radio silent, okay.

1 We filed the motion I guess yesterday, the day
2 before. We have not yet had a chance to serve him with that.
3 So what I would suggest that the Court do is set a -- so I
4 mean I'm happy to advise the Court of what's missing, but we
5 sent a letter to Mr. Almonte saying these are the specific
6 things that are missing. It includes communication, and it
7 includes records of payments and invoices which we know exist
8 because another witness has told us they should exist. We
9 sent a letter to Mr. Almonte saying please get us these
10 things, a number of letters, please do it by this date certain
11 or we'll have to file a motion. We then filed a motion.

12 So what I would suggest to the Court, if the Court
13 wants to set a date for a hearing for an order to show cause,
14 we'll serve that order in our motion at the same time and come
15 back on a date when Mr. Almonte will be aware of the hearing
16 and appear.

17 THE COURT: I'm going to set a hearing for all three
18 of those motions.

19 MR. MARKS: Okay. Yeah, right, Your Honor, because
20 the other -- there's also the motion with respect to Carlos
21 Pena and a motion with respect to Vasila Queen. We just filed
22 those responses, and so we need a hearing for those three,
23 Your Honor.

24 [Pause in proceedings.]

25 THE COURT: So that's the motion for a protective

1 order by Carlos Pena and it's the motion for a protective
2 order by Vasila Queen and the order to show cause against
3 Alexander Almonte or a motion for an order to show cause.

4 MR. MARKS: We -- I'm happy to pick a date. I only
5 caution that the attorney on the Queen and Pena motion is an
6 attorney from Florida, so we should pick a date but he may
7 need to change that date. And we'll work --

8 THE COURT: I'll just ask you to reach out and
9 forward a copy of the order.

10 MR. MARKS: Okay.

11 THE COURT: And if you need to pick a new date, just
12 see if you can agree on one.

13 [Pause in proceedings.]

14 THE COURT: All right. Let's pick a date.

15 MR. MARKS: I'm fairly flexible, Your Honor.

16 THE COURT: August 20th?

17 [Pause in proceedings.]

18 MR. MARKS: Is the 21st possible, Your Honor?

19 THE COURT: I can't do the 21st. How about the
20 22nd?

21 MR. MARKS: I can do, yes, the 22nd. Twelve
22 o'clock?

23 THE COURT: That's fine, Your Honor.

24 MR. MARKS: And I'll reach out to -- we'll reach out
25 to counsel, and we'll file the Queen and Pena motion if it

1 needs to be revised. We'll reach out to your chambers.

2 THE COURT: That's fine.

3 MR. FISHER: I'm going to have dinner with one or
4 both of them down in Miami this weekend. I'll tell them,
5 also.

6 [Pause in proceedings.]

7 THE COURT: All right. I think that deals with four
8 of the motions.

9 [Pause in proceedings.]

10 THE COURT: Now as to the motion to compel.

11 [Pause in proceedings.]

12 THE COURT: So what exactly is still outstanding?

13 MR. MARKS: So, Your Honor?

14 THE COURT: As opposed to stuff that they're
15 objecting to and we'll talk about that, but --

16 MR. MARKS: So and I think this starts to get a
17 little dense and the paper starts to get a little bit
18 confusing. And so I think the simplest way to think about
19 this, Your Honor, is so on April 19th, we sent a letter to
20 counsel for the professional defendants in which we wrote in
21 great detail each of the things that were missing and with
22 broad brushes. There are certain categories of documents that
23 are missing. There are interrogatory responses in which
24 they've answered some part but not the other part. There are
25 interrogatory answers that either don't make sense or where

1 the interrogatory answer says one thing, and Mr. Furman is
2 telling us something slightly different in a meet and confer.

3 There are, as I say, there are interrogatory answers
4 in which some subparts are answered and other subparts aren't.
5 There are instances where sometimes they say documents don't
6 exist, but the document responses aren't clear that the
7 documents don't exist, and we've said, look, if they don't
8 exist, they don't exist. That's fine. We just need
9 confirmation that they don't exist or who doesn't have them.

10 And so, we could get into the excruciating detail,
11 but here's really what I think it sort of comes down to when I
12 sort of say, you know, what are the issues with respect to
13 professional defendants any sort of need, number one, to the
14 extent that there are documents that they say that they're
15 going to produce, we just need them produced by whatever that
16 date certain.

17 So if they've got documents, whatever they are, you
18 know, and they are what they are, just give them to us and
19 give them to us by a date certain. And we've just never had
20 that clarity, and we've been attempting to get that clarity,
21 but just give them to us. We got some -- we started to get
22 some documents on Monday of this week, fine. But we just need
23 a date certain to produce them.

24 The second thing we'd need is to the extent that we
25 have written document responses, we need the defendants to go

1 back, and we've asked them to do this, and look at them and
2 revise those responses to just be clear. Look, just tell us
3 you're producing the documents, you're not producing the
4 documents, or you're objecting. And I don't think that's
5 clear. In some instances, it's clear but in some instances,
6 it's just simply not clear and we can't tell. So just go back
7 and do that just so we know what we're getting and what we're
8 not getting.

9 With respect to the interrogatories, we need the
10 defendants to go back and we need them to revise their
11 interrogatories. Now I understood from a meet and confer back
12 in April that counsel was evaluating whether to revise those
13 interrogatories and even had suggested that he was going to
14 revise some of those interrogatories. I don't know whatever
15 happened to that. They went sort of radio silent on it, but
16 we need those interrogatories revised so that, for example --
17 let me just give you an example. One of the interrogatories
18 asks about billing software. The interrogatories right now
19 say we don't know anything about billing software, but the
20 response that's been filed with the Court says, of course,
21 State Farm knows there's no billing software.

22 Well, we don't care what the response is. It is
23 what it is. Just get the response right. And, you know, Mr.
24 Furman has also told us things in the meet and confer. For
25 example, one of the things we said is are there lease

1 agreements and they've said, no, there's only one written
2 lease agreement, okay, and -- but they're oral agreements and
3 the terms of the oral agreement are sort of random. And the
4 amounts fluctuate up and down. Well, that's something Mr.
5 Furman told us in a meet and confer, and that's fine. That
6 may be the truth, but Mr. Furman isn't a party. He can't
7 testify to that. We just need that in a response. So we just
8 need the interrogatory and responses answered.

9 In some instances, we've been told, the
10 interrogatory answer's look at the documents. Okay, that's
11 fine. Sometimes the documents do provide answers. So, for
12 example, we've said who owns the defendant entities and when
13 did they acquire an interest in the defendant entities and
14 what percent interest do they own in the defendant entities.
15 And the defendants have said look at the documents we've
16 produced.

17 Well, the documents that are produced are the
18 incorporation documents. That maybe tells us who owned it
19 when it was incorporated, but it doesn't answer the percentage
20 ownership, when they acquired that interest. And Mr. Furman
21 has said to us, well, I think all of the defendants owned it a
22 hundred percent. Again, that may be true and that's fine if
23 that's true, but let's get the answers revised so that we can
24 get that in an interrogatory answer so we can get it responded
25 to.

1 So, and we can get in a second to the ones where we
2 have disagreement, but essentially, what we're seeking then
3 is, one, get us the documents that you're going to get us and
4 just pick a date certain by which we're going to get them,
5 whatever they are; two, revise the documents responses to tell
6 us what we're going to get, what we're not going to get, and
7 what you're objecting to and just make sure it's sort of
8 crystal clear so we don't have any disagreement; and then
9 three, we need revised interrogatory responses that answer all
10 the subparts and are clear and correct and clear up all the
11 confusion, back and forth that we've had through the meet and
12 confer and we need that by a date certain.

13 I think if we get that done -- and, again, we can go
14 through some of the specifics if you'd like, but I think if we
15 get those three things done, that will alleviate -- and by a
16 date certain, that ought to alleviate a lot of the issues that
17 I think we have.

18 THE COURT: What three things, the interrogatory
19 responses --

20 MR. MARKS: Produce --

21 THE COURT: -- the documents?

22 MR. MARKS: Produce all the documents, revise the
23 document responses, revise the interrogatory responses. I
24 think that ought to -- if we can get those three things done
25 and we can get them done by a date certain -- and when I say

1 revised interrogatory responses, sort of include -- you know,
2 including that we get responses for all these subparts. And
3 assuming we get that done, I think that ought to resolve a lot
4 of the issues, again, with the exception of I think there are
5 only three or four things about which we actually disagree,
6 and we can go through those if you'd like.

7 THE COURT: All right.

8 MR. FURMAN: Before we get to that, Your Honor, can
9 I be heard on that?

10 THE COURT: Sure.

11 MR. FURMAN: First of all, and I said this all in my
12 letter, there were seven categories of relief that he wanted.
13 I've responded to each of the seven categories. But so now,
14 from this, it sort of boiled down to three for this aspect of
15 it, so I'll speak to those.

16 We have produced every document that we have. It's
17 just that simple. We scrounged a few days ago from one party
18 defendant to find some older things that he had found either
19 in a trunk or underneath a pile of papers because they were
20 insistent on it. And by the way, these are not particularly
21 [indiscernible] documents we're talking about. It is
22 certifications of incorporation, licenses.

23 The other thing that I think is critical here, they
24 have issued subpoenas to every financial institution that
25 could possibly give them any documents that they are now

1 saying they want. Why are we being harassed to produce those
2 same documents. And in response to the April 19th letter, I
3 asked and it's in my letter, can you please tell us what you
4 have already because I don't see the point in us giving
5 documents that you already have. And us giving you bank
6 records, I mean, you've got them from the bank. You're going
7 to get a much better picture from the bank records than you
8 will from our records that we have and to be able to -- that
9 we've retained or we can get.

10 I don't understand why we should be compelled to
11 give them the same documents that they already have, and they
12 won't even tell us what they have. But I will tell you that
13 one of my clients said to me the other day I've got -- and I
14 didn't produce them -- I've got letters from all these banks
15 telling me that they're getting my documents and they can have
16 them. But now you're asking me to produce them again. Why am
17 I having to do that? It really, really seems unfair.

18 And the statute -- the standard is proportional to
19 the needs of the case. So how is duplicate production
20 proportional to the needs of this case, which by the way has
21 taken a left turn from the very beginning from the allegations
22 in the complaint. So -- and we're past that perhaps, but to
23 produce the same documents that they have, if we could --
24 assuming that we even have them. I don't believe we do. We
25 gave them from the get-go --

1 THE COURT: You're talking about bank records. Is
2 that what you're looking for?

3 MR. MARKS: I'm not sure what he's saying because
4 I'm hearing a couple of things and that's why I'm confused.
5 He began by saying we've produced every document that we have,
6 and now he's saying I don't want to produce anything else,
7 which gives me some confusion. So I don't know what he's
8 saying. I don't know whether he's saying they have more
9 documents that they don't want to produce because if he's
10 saying that, that's the first thing I've ever -- it's the
11 first time I've ever heard that.

12 If he's saying he doesn't know what we have in terms
13 of third party production, he made that assertion in his
14 letter that's absolutely false and I have an email exchange in
15 which we told him what we have and we've made available our
16 third party production. So that's not true. But so I'm not
17 sure. So here's --

18 THE COURT: But just as a basic premise, I don't
19 think, you know, there's any reason at this point to be
20 compelling them to produce documents you already have. So if
21 there's something specific that you are looking for that you
22 don't already have, tell me what it is.

23 MR. MARKS: Well, so there is -- so, look, there is
24 one -- if what I'm hearing is -- and again, I only need to
25 understand -- if what he's saying is, look, the bank records

1 is one category of records that I don't want to have to
2 produce again, let's assume that's what he's -- and I need to
3 know what he's talking about because I don't know what he has,
4 right. So if he's saying to me I don't have bank -- I don't
5 want to produce the bank records again, okay. That's fine.

6 But as we've said in our April 19th letter and as we
7 have pleaded with them to tell us is we've said, look, just
8 confirm for us that you have identified all of your clients'
9 bank accounts in response to interrogatories just so we know
10 what they are, okay. And we can't get an answer to that.
11 Just tell us what they are.

12 Now, maybe you'll give us a list of five and we'll
13 say we're entitled to four of them and then we'll fight about
14 -- but at least give us a list of what they are because we
15 have found through the course of discovery we've had one
16 account and then suddenly there's another account that we
17 didn't know about for which a lot of relevant money is moved.
18 So we said to him just confirm, just confirm that you've
19 identified all the accounts. We'll look at all the accounts
20 that exist, and then if we've got them from the banks, that's
21 fine. He doesn't need to produce them, but he's got to do the
22 first thing which we've been waiting for several months for
23 him to do.

24 MR. FURMAN: Your Honor, if they're telling us that
25 they know of another bank account, please -- and I do not have

1 any response to that -- tell me what the bank is. Tell me the
2 bank account number, I'll confirm it or not. But I haven't
3 heard it.

4 THE COURT: I don't think that's what they're
5 saying. I think they're -- look, clearly, they have records
6 from a number of bank accounts. I'm not going to ask you to
7 reproduce those same records. The only thing that they're
8 asking for that I would be inclined to give them is if there
9 are other accounts that they don't have records for. That's
10 what we're talking about. I don't know whether there are
11 other accounts. Only your clients would know that.

12 MR. FURMAN: We have given them obviously all the PC
13 accounts and we have given them personal accounts. Now, I
14 don't know.

15 THE COURT: What else is there?

16 MR. FURMAN: Okay. I'm not aware that there are. I
17 mean people have -- sometimes have more than one personal
18 account. I mean it's not uncommon.

19 THE COURT: That's entirely true. I have more than
20 one personal account. But they're asking for the account
21 number so that they can verify they have everything.

22 MR. FURMAN: Well, let me say this. I would think
23 that just by way of the account that they do have, that they
24 could see everything that they need to see.

25 THE COURT: Maybe yes, maybe no. I don't know.

1 MR. FURMAN: Well, Judge, I think it's beyond
2 proportional to say give me every personal bank account that
3 you have. They have accounts with their spouses. They may
4 have accounts with family members. I mean at what point in
5 time do we say, okay -- you know, they've got a lot of
6 material here. I mean they're looking like they're going to
7 find this, you know, golden egg. It's not going to ever be
8 there -- and smoking gun, I should say. It's just not. It's
9 not going to be in some, you know, municipal union record
10 including those of -- including which they've already
11 subpoenaed.

12 I mean so I am not clear what more they want me to
13 say. They want to say that we have no other bank accounts --

14 THE COURT: At the initial stage, at this point,
15 what they're asking for and what the Court is asking for is
16 are there other accounts beyond what has already been
17 produced, whether it's been produced by you or produced by the
18 bank. If the answer to that question is yes, then we could
19 talk about the propriety of subpoenaing those extra accounts,
20 but at the first stage, you have to know whether there are
21 other accounts.

22 MR. FISHER: May I make a suggestion, Judge?

23 MR. MARKS: And I'm going to object to Mr. Fisher
24 saying anything. He's not a party to this motion. His
25 clients have defaulted. He is out of the case.

1 MR. FISHER: That's why I asked if I might make a
2 suggestion.

3 THE COURT: I'd rather hear from Mr. Furman since
4 it's his clients.

5 MR. FURMAN: But let counsel provide me with a list
6 of what it is that he believes he is missing.

7 MR. MARKS: We did that on April 19th and then they
8 went and then they went radio silent which is -- and despite
9 numerous emails and phone calls to say please come talk to us
10 about what's missing in our April 19th letter and that's why
11 we had to file a motion and that's why we're here.

12 So if we're talking about the -- let's -- and for a
13 moment, the bank accounts is sort of a -- is a simple example
14 of sort of what we're talking about which is what I'm hearing
15 is they're arguing sort of five different things, right, which
16 is, one, they're arguing I don't know; two, they're arguing
17 State Farm ought to know; three, they're arguing State Farm's
18 not entitled to this; four, they're -- what it clearly comes
19 down to is they just don't want to do it. They just don't
20 want to bother. It's just sort of just too much work. They
21 just don't want to have to deal with it. And so --

22 THE COURT: I don't see a lot of work just
23 identifying what the bank accounts are.

24 MR. FURMAN: Judge, I hear what the Court is saying.
25 And --

1 THE COURT: I just wanted to know whether there are
2 extra other accounts.

3 MR. FURMAN: And I mean I don't -- I know that there
4 are no more PC bank accounts. And I have given them personal
5 bank accounts. But if there are other personal bank accounts,
6 I will identify them. However, before there's a subpoena
7 issued to them, I'd like to meet and confer with counsel
8 because there may be personal things in there.

9 THE COURT: Identify for him all of the accounts,
10 all of them. And if there are accounts that you don't already
11 have the records for, see if you can agree on whether or not
12 they should be produced. And if not, then you could bring it
13 to me. But you have to at least let them know what the
14 accounts are. You can't just say they have everything if they
15 don't know whether they have all the accounts or not.

16 MR. FURMAN: So understood. On the other records
17 that they say that we have outstanding records, since this
18 letter was written, I've given them some additional tax
19 returns. And they keep asking for records of Darran Marlow,
20 DCPC, which was dissolved in 2006 before the years -- six
21 years before they allege in the complaint. My client is
22 screaming why are you asking me for this. So I would like
23 everything about Darran Marlow, every request for DCPC to just
24 be ignored at this point because it's ancient and it has
25 nothing to do with this case. The guy's got three other PCs

1 who are active, so it's not like he's walking out of the case.

2 Thirdly, incorporation records, whatever we have,
3 we've given. What do we have? We have no more, and I can say
4 that. I'm making that representation in open court.

5 Now, let me go on to a couple of other things.
6 That's -- he's just asked for three things, documents produced
7 by a date certain. We've perhaps resolved that in terms of
8 what will be next.

9 THE COURT: I don't know have you? And what else is
10 out there?

11 MR. MARKS: Well, there's all kinds of things that
12 are out there, Judge. We don't have all the bank records,
13 okay. We --

14 THE COURT: We dealt with that issue. What's the
15 other thing?

16 MR. MARKS: We don't have all the tax returns. Now,
17 he said go ask the accountant, so we did ask the accountant
18 and we've got some records from the accountants. But we don't
19 have all the tax returns. We're missing some tax returns, and
20 we've told them which ones were missing. We were very
21 specific. We put it in a letter, and we want them. We --

22 THE COURT: What's the other tax returns?

23 MR. MARKS: Okay.

24 MR. FURMAN: If I have them.

25 THE COURT: Just one issue at a time.

1 MR. FURMAN: I'm not familiar with his letter, but
2 if he --

3 THE COURT: Do you have a copy of the letter?

4 MR. FURMAN: -- resent it to me, I will --

5 MR. MARKS: It's an exhibit, and it's the April 19th
6 letter.

7 MR. FURMAN: Oh, that's sitting in front of me.

8 MR. MARKS: It's our April 19th letter. It's an
9 exhibit to our motion.

10 MR. FURMAN: Yeah. It asks for tax returns of
11 Darran Marlow, PC, and Energy Chiropractic, PC, one of
12 Marlow's -- I gave them Energy Chiropractic, PC. It was just
13 the other day. And I'm saying that Darran Marlow, PC, is not
14 relevant.

15 THE COURT: That's the one that's -- that you're
16 arguing is --

17 MR. FURMAN: Other than that, I don't see anything
18 else in the tax returns that they don't have.

19 MR. MARKS: Well, no, there's a list of ten missing
20 tax returns in the April 19th letter which is at Exhibit -- we
21 can go through these one by one.

22 MR. FURMAN: I know what's in the exhibit. I have
23 it in front of me.

24 MR. MARKS: Okay. It's --

25 THE COURT: I think we got to be specific because

1 the more we talk in generalities, the more --

2 MR. MARKS: Okay, that's fine.

3 THE COURT: -- the parties just cross each other.

4 MR. MARKS: That's fine. Okay.

5 THE COURT: You're just along for the ride today,
6 huh?

7 MR. COOK: I make it a practice to appear when all
8 counsel is ordered to appear.

9 MR. MARKS: Okay. So --

10 THE COURT: That's all right. I'm sure at the next
11 one you'll be up and --

12 MR. FURMAN: What I'm seeing here is not only the
13 two chiropractic returns here, it's on Page 5 of their letter,
14 Item No. 15. And they go through certain years of certain
15 returns that they say weren't produced.

16 THE COURT: Okay.

17 MR. FURMAN: You know, 2015 of one and 2016 of
18 another. The only person who would have those would be the
19 party defendant or the party defendant's accountant.

20 THE COURT: Okay.

21 MR. FURMAN: They subpoenaed the party defendant's
22 accountant. I don't know exactly what he's produced because I
23 don't have it, but I could get it and find out what's there.
24 But I am given to believe that he has given them everything
25 that he has.

1 THE COURT: Look, if they already have it from the
2 accountant, then they don't need it again.

3 MR. MARKS: That's fine, but --

4 THE COURT: The only thing they need is what they
5 don't have.

6 MR. MARKS: Which is what we put in the letter on
7 April 19th of this year, and we said please -- and in fact, in
8 advance -- and after the April 19 -- at the time of the April
9 19th conference, as this letter confirms, you agreed to
10 produce the missing tax returns. You agreed to do this. So
11 why counsel is standing there now and saying he's not going
12 to, I'm not sure.

13 THE COURT: When did you subpoena the accountant?

14 MR. MARKS: We did, and we got -- and so we did get
15 tax returns from the accountant.

16 THE COURT: Okay.

17 MR. MARKS: And there are tax returns -- and to the
18 extent we got them from the accountant, I'm not -- we're not
19 going to ask him to reproduce.

20 MR. FURMAN: Okay.

21 MR. MARKS: That's fine.

22 MR. FURMAN: So that was done after this April 19th
23 letter.

24 THE COURT: That's what I'm trying to figure out,
25 what -- you got stuff from the accountant so some of those on

1 the list are crossed off now, right?

2 MR. MARKS: I can get -- I'll tell you what's
3 missing.

4 MR. FURMAN: Well, if you would -- and I mean we can
5 make it on the record, but if you just send me --

6 THE COURT: I'd rather just do it on the record
7 because --

8 MR. FURMAN: Okay, whatever.

9 THE COURT: -- I tell the parties to deal with this
10 stuff on your own and you just end up back before me in a
11 couple of months anyway.

12 MR. FURMAN: No problem, Judge. I don't think it's
13 a very big list.

14 [Pause in proceedings.]

15 MR. MARKS: I thought I had it but it does not
16 appear that I do. Hold on, if you'd just give me -- yes, I
17 do. All right. So from the accountant, so here's the ones
18 that were missing. We're missing -- in the letter, we're
19 missing Darran Marlow, DCPC's tax returns. We're missing
20 Energy Chiropractic's tax returns. We're missing ACH
21 Chiropractic's tax returns. We're missing the 2017 tax return
22 of Island Life Chiropractic. We're missing the 2017 tax
23 return of RA but not the 2015. We're missing the 2017 tax
24 return of Allay Medical Services but not the 2015. And those
25 are the only ones that we're missing.

1 MR. FURMAN: Of those, and I'll ask counsel to
2 verify that all of the first few we talked about Darran
3 Marlow, DCPC. But Energy, ACH, and Island Life were all given
4 to me and I forwarded them from the client in the preparation
5 of this letter. So with that, that's all from the same
6 chiropractic PC.

7 The last things that they are saying they don't have
8 are two sets of 2017 PC returns, one for one RA Medical and
9 one Allay Medical. We will produce them if they exist. My
10 suspicion is that they haven't filed for 2017 which is the
11 reason that Mr. --

12 THE COURT: If that's true, that's fine. But, you
13 know, you got to let them know --

14 MR. FURMAN: Okay.

15 THE COURT: -- one way or the other.

16 MR. FURMAN: I'll find out if they filed. If they
17 have filed, I will have the returns produced.

18 [Pause in proceedings.]

19 THE COURT: Does that cover all of the tax returns?

20 MR. MARKS: That covers the tax returns.

21 THE COURT: All right. What's next?

22 MR. MARKS: Financial information. So we sought
23 business records, so and -- and were told by the accountants
24 that they were given financial information to prepare tax
25 returns. Mr. Furman was going to confirm that professional

1 defendants did not have any documents responsive to this
2 request and advise us. And we need him to do that. This goes
3 to the point that I made to your earlier which is if we can
4 get essentially revisions to the responses to the document
5 requests confirming that there are no documents, that should
6 in theory resolve this issue.

7 If, as Mr. Furman, represented to us in the meet and
8 confer that these documents do not exist for all of
9 defendants, that should resolve this issue, assuming that
10 continues to be accurate.

11 MR. FURMAN: I believe it is accurate, but could you
12 just point out to me which one it is? It

13 MR. MARKS: This is --

14 MR. FURMAN: -- Item 16, No. 7 and 8.

15 MR. MARKS: Yep.

16 MR. FURMAN: Okay. You mean balance sheets and
17 general ledgers, right?

18 MR. MARKS: Okay.

19 MR. FURMAN: I'll make that confirmation.

20 THE COURT: Okay.

21 MR. MARKS: Okay.

22 MR. FURMAN: But may I add that he's also saying
23 that he has some of those documents. He has documents, and I
24 don't want to be put in a position where I say I don't have
25 documents and he's already got them. I don't want to be in a

1 trap like that.

2 THE COURT: Well, if you don't have them, that
3 doesn't necessarily mean they don't exist. It just means your
4 client doesn't have it.

5 MR. FURMAN: I don't have them. I could have given
6 them to the accountant, that's true, and not retained copies.
7 Entirely possible.

8 MR. MARKS: All the document response says is that
9 the documents are in your possession, custody, and control.
10 That's --

11 THE COURT: Yeah.

12 MR. MARKS: -- all we're asking him to certify. If
13 that's the case, that's the case.

14 THE COURT: Unless they answer is these documents
15 never existed, I don't think you have any problem. You're
16 just either producing it or saying my client -- you know --

17 MR. FURMAN: Yeah, I mean I don't think --

18 THE COURT: -- we don't have possession of them.

19 MR. FURMAN: These are not -- these are mom and pop
20 businesses. I mean they don't have profit and loss and
21 shareholder distributions.

22 THE COURT: Okay.

23 MR. FURMAN: Balance sheets, general ledgers. Come
24 on, I mean --

25 THE COURT: If they don't have it, they don't have

1 it.

2 MR. FURMAN: Well --

3 THE COURT: I mean I'm not surprised if they don't
4 have that, but just say they don't have it.

5 MR. FURMAN: Well, right. I mean I don't know.
6 Okay, I'll have to speak. He says he received financial
7 records, the accountant. I don't know what financial records
8 he received. I would assume he just received checks, which is
9 most accountants get.

10 [Pause in proceedings.]

11 THE COURT: All right. Next?

12 MR. MARKS: All right. Item 15 is that we asked
13 that they produce all records of lease payments, and in the
14 meet and confer, Mr. Furman said that what he meant by this
15 response was that all the lease payments were reflected in the
16 bank records. But it meant that all lease payments were the
17 bank payments from every bank payment to Ksenia Pavlova was a
18 rent payment, and every payment from Pavlova to Kings and
19 Queens was a rent payment. That's what he told us and that's
20 fine and that may be true and those may be all of the records
21 that are responsive to the request. But, again, I think as
22 I've noted, I'd love to put Mr. Furman on the stand to testify
23 to this fact, but I can't. We just need him to confirm what
24 he sort of -- and as he says here, he agreed to confirm that
25 what he told us in the meet and confer was true and put that

1 in his response. If he does that, we're fine.

2 THE COURT: Okay.

3 MR. MARKS: The next item is billing data. We've
4 asked them to produce their billing data, and they haven't.
5 He agreed to determine whether they had billing data and, if
6 so, to produce it.

7 MR. FURMAN: There's no billing data. I've gone
8 over this with them verbally and in writing more than once.
9 They think that there's some program or something that just
10 generates out these form things. There isn't one. I mean I
11 can't say it any other way. They have the bills. They have
12 the records. What else can I give them? I don't know.

13 THE COURT: I don't know what exists. You tell me.
14 If there's nothing else, then say that.

15 MR. FURMAN: I've said it.

16 MR. MARKS: This was the first time he's ever said
17 it, so, one, I'm glad to hear it. I'm surprised to hear it
18 given that they've submitted millions and millions of dollars
19 of bills, and I'm surprised that there is no data somewhere
20 that captures that, but that's the answer that, that's the
21 answer. But put it --

22 THE COURT: Other than the bills themselves?

23 MR. MARKS: Other than the bills -- then put it in
24 an answer because as we said in our April letter, you agreed
25 to find out if any such billing that exists and, if so, to

1 discuss a proposal with your clients to produce it. Again,
2 today's the first I've ever heard a response. Give us a
3 response, put it in the answer, and give it to us.

4 MR. FURMAN: I have.

5 MR. MARKS: That's all we're asking for.

6 MR. FURMAN: I have responded to that. I certainly
7 know that I have verbally and I'm fairly certain that I have
8 in an email of some nature.

9 MR. MARKS: If you'd like to show us what there is,
10 I'm --

11 MR. FURMAN: Well, I'm not going to take the time if
12 you don't mind. I don't think the judge needs to take time
13 for that.

14 THE COURT: Just give him the answer.

15 MR. FURMAN: But this is not the first time that I
16 remember formulating the response as it will be in a writing,
17 so. But I'm not going to even find it. I will just give you
18 the answer.

19 THE COURT: Just give him the answer. Next?

20 MR. MARKS: Equipment, all right. So this is both a
21 document request and an interrogatory. And essentially, what
22 we've asked with respect to equipment is the equipment that
23 they used to treat the patients, we want to know when was it
24 purchased, when was it rented, when was it calibrated, when
25 was it maintained. We want essentially the information

1 associated with, you know, does it work, okay, is it
2 effective, right. What we got was the instruction manuals
3 which would tell us how to operate it which would be great if
4 we wanted to operate it. We don't want to know how to operate
5 it. We want to know the information we asked was whether --
6 were these fairly specific things that were asked for in the
7 document request and interrogatory.

8 If the answer is simply I don't have anything, and
9 that's fine, if there's not a scrap of paper that shows that
10 they ever calibrated a single machine that tested our
11 patients, that's great evidence for us, and we'd love to have
12 that. We'd love to know that. But that's why we just simply
13 need an answer, tell us that -- and I believe we got manuals.
14 We got -- I think some instruction manuals were produced on
15 Monday. So two days ago we got some instruction manuals. If
16 that's the universe, if it's just instruction manuals, that's
17 fine. Just confirm it that that's what we've got. Then we're
18 good.

19 THE COURT: Okay.

20 MR. FURMAN: I'll confirm --

21 THE COURT: That that's it.

22 MR. FURMAN: -- that that's it.

23 THE COURT: Okay.

24 MR. FURMAN: I don't know -- I could tell you now it
25 doesn't mean to me that -- I don't even know which machines

1 need calibration, but --

2 THE COURT: Look, I'm not a doctor. I don't know
3 anything about it, so.

4 MR. FURMAN: -- let the experts if they ever get to
5 experts talk about that. But it doesn't mean that we
6 continued to keep the calibration records anyway. But
7 whatever we have --

8 THE COURT: Whatever you have, turn over. If you
9 don't have it, then say you don't have it.

10 MR. FURMAN: Whatever we have. I will tell you
11 whatever was there collected showed up in a box in my office
12 and at my -- to my request. And to be honest, it got sort of
13 lost among the boxes, and I kept saying I got to get that
14 done, and the months went, you know, beyond these. But I did
15 do it now, and this is all I have and this is all I've been
16 given.

17 We also gave them -- and correct me if I'm wrong
18 because I remember doing this at the beginning, we gave them a
19 comprehensive list of all of the equipment that was in the
20 location and I believe it included dates of purchase,
21 approximate dates of purchase. It doesn't mean we have the
22 bills because they're -- and some of them were imported from
23 earlier practices. But I -- correct me if I'm wrong, I know
24 that I prepared such a list.

25 MR. MARKS: Okay. So we're going to get -- what I'm

1 hearing is we're going to get produced whatever they have and,
2 again, as to my point, we'll get confirmation but that's it.
3 And if that's it, that's it. Okay? It is what it is.

4 MR. FURMAN: I just want the record to reflect that
5 we didn't ignore it, that we gave them -- what's really
6 important to them is what equipment do you have --

7 THE COURT: Yep.

8 MR. FURMAN: -- and when did you get it. And I
9 think we've provided that at the outset. I know we did
10 because it was the only thing that had any relationship to the
11 complaint.

12 MR. MARKS: Okay. The next category is what I'll
13 call solicitation documents. All but one of the defendants
14 responded that they don't have responsive documents. One
15 defendant, Charles Deng Acupuncture, said that he did have
16 responsive documents. We were told during the meet and confer
17 that that was a mistake, that he really didn't have responsive
18 documents. And we will get confirmation as to whether he did
19 or he didn't, and if he did, we're going to get documents. So
20 somebody needs to confirm whether there are documents. If
21 there are, they need to be produced. If there aren't, they
22 need to amend their answer and clarify that he doesn't have
23 responsive documents.

24 THE COURT: Okay.

25 MR. MARKS: All right. The next item in the letter,

1 and I don't know whether you wanted to deal with the contested
2 items. The next item is telephone records, so now that is an
3 item that about which we -- there seems to -- the parties
4 disagree. Would you like to address that now or do you want
5 to move through the noncontested ones?

6 THE COURT: Sure, let's talk about it now. Why do
7 you need telephone records?

8 MR. MARKS: Okay. So, first, let me say that it's
9 our position and the Court can deal with this as it likes,
10 that the defendants waived their ability to make any
11 substantive objections to these discovery requests back in May
12 of 2018. And I'll remind the Court of the procedural history
13 here. When we served these discovery requests, the defendants
14 filed a motion for a protective order. That motion for a
15 protective order sought to block our discovery requests on the
16 grounds that they sought financial information. The requests
17 for financial information was not proportional to the needs of
18 the case.

19 As a result of that, the Court may recall that it
20 issued a ruling that said we could have the tax returns of the
21 corporate defendants. We couldn't have the tax returns of the
22 individual defendants, okay. So at that point, they had the
23 opportunity to raise any issues they had with respect to the
24 scope of the discovery requests that they had. And it was our
25 position and we raised it back in May of 2018 that you get

1 sort of one bite at the apple to raise all of your issues with
2 respect to the substance at least of the discovery requests.
3 And to come up with new substantive objections at this point
4 down the road, we believe, is improper and waived, okay.
5 That's sort of point one.

6 But even if you sort of say, all right, well, fine,
7 we'll let them hear -- you know, you're going to go ahead and
8 hear this objection. We're not -- as their letter suggests,
9 we're not looking for nor are we going to get the content of
10 telephone communications, okay, because that's not -- they
11 don't have that, right. We're going to get bills that are at
12 most going to show who the telephones belonged to and who made
13 calls from whom, to whom, and when they made them.

14 We're prepared to limit this request to telephones
15 that were used associated with the businesses that operate at
16 1786, okay. It doesn't say that in the -- it may say that in
17 the request. I'm not sure whether it does or it doesn't, but
18 we're certainly prepared to limit it to those phones. And it
19 is relevant because we think --

20 THE COURT: For what period of time are you looking
21 for?

22 MR. MARKS: Well, for the period of time that's
23 alleged that's at issue in the complaint. And I don't have
24 the complaint in front of me, and I don't remember offhand --

25 MR. FURMAN: I believe it's from 2012.

1 MR. MARKS: I think it's 2012 to the present, so it
2 would be whatever te period is of the complaint.

3 And because I think -- I mean and as the Court will
4 remember, the telephone records have proved to be a important
5 piece of evidence. I know Mr. Fisher is going to want to jump
6 up -- jump all over this particular piece of evidence, but it
7 is in fact a piece of evidence. We do know that one of the
8 issues is who controls the Durable Medical Equipment
9 providers. And what we found was that the Durable Medical
10 Equipment providers had their supplies ordered from an entity
11 called Precision Medical Supply which is located I think in
12 Kansas, maybe Iowa. It's somewhere out in the Midwest.

13 UNIDENTIFIED SPEAKER: Missouri.

14 MR. MARKS: Missouri, okay. And the person they
15 dealt with on the phone was a person by the name of Barbara
16 who spoke with a Russian accent. The only person and we said,
17 well, who is Barbara, do you know anything about Barbara and
18 who is the person who ordered the supplies, they said, well,
19 here's the phone number of the person I dealt with every
20 single time when I ordered the supplies. That phone number
21 links back to Tatiana Rybak. It's Tatiana's Rybak's phone
22 number because Tatiana Rybak ultimately moved to quash access
23 to her T-Mobile records that would link that phone number to
24 her.

25 And, also, the checks that were written for those

1 supplies were these multiple checks. You know, how we have
2 nine or ten entities, different entities operating at 1786?
3 That's how they're paying for the supplies from Precision.
4 So, again, it's an incident in which the fact that we're able
5 to link a phone, participate in the activity shows that the
6 telephone records have proved to be in one very specific
7 instance that we've been able to identify a critical piece of
8 evidence for our case. And for that very reason, we think the
9 telephone records, the calls that are made and frankly, the
10 absence of calls that are made -- if the doctors are not
11 participating in any way, shape, or form in making calls that
12 are associated with the business, we think that's relevant,
13 too.

14 And as I say, we're prepared to limit it. If
15 they've got a phone that they say they never used whatsoever
16 for any business related to 1786, we'll agree you don't have
17 to give us those records. If it's a phone that they used for
18 business related to 1786, we'll limit it to those phones.

19 MR. FISHER: Judge, may I speak to that since Mr.
20 Marks brought me up talking about it? And to put a little
21 clarity to that particular --

22 MR. FURMAN: Well, before you do --

23 UNIDENTIFIED SPEAKER: -- subject --

24 MR. FURMAN: -- if you don't mind, my co-counsel,
25 may I just remind the Court I'm not one of the DME defendants.

1 I'm a professional defendant. So whatever he's got that he
2 thinks he has that's so important with the DME defendants,
3 what does it have to do with the professional defendants? I
4 don't know. He hasn't made any showing that there's a basis
5 for that. So I'll speak more about it, but I just wanted to
6 make that clear because I don't want to get mixed up with --

7 THE COURT: Just so I understand it, it seems what
8 you're suggesting is the phone call shows Tatiana Rybak's
9 ownership or at least involvement in the DME business because
10 she's ordering supplies on their behalf.

11 MR. MARKS: More than that.

12 MR. FISHER: But it doesn't, Judge.

13 MR. MARKS: More than that. And to the extent that
14 counsel -- more than that, to the extent counsel's suggesting
15 there's no connection to the professional defendants, bank
16 accounts of professionals defendants, okay, were used to pay
17 for supplies for the DME defendants. So they didn't just pay
18 for supplies out of the accounts of the DME defendants. They
19 used bank accounts of the professional defendants. And what
20 that tells us, at least our theory and at least it supports
21 our theory, is that there was control over this location and
22 of all the accounts that were at this location, and they were
23 all mingled together.

24 In fact, Tatiana Rybak has testified that the
25 account -- we used whatever accounts just happen to be around.

1 And if it's an account associated with a provider at 1786,
2 they're using all the accounts, the DME accounts, the
3 professional defendant accounts, the physical therapy
4 accounts, the acupuncture accounts, the medical -- the MD
5 accounts, it doesn't matter. Those were the accounts that
6 were used, but doctors' accounts were used to buy DME
7 supplies. So there is a connection to the Durable Medical.
8 There is a connection to the professional defendants.

9 And now, we can argue over what it means, and maybe
10 there's a wonderful innocent explanation that someone can
11 present at trial. But that's not what this is about. This is
12 about is there enough smoke to say that this is a relevant
13 issue for discovery.

14 MR. FISHER: Now may I be heard on that one
15 particular issue?

16 THE COURT: Sure.

17 MR. FISHER: Tatiana Rybak was employed by Medical
18 Spa, an anti-aging spa in Florida. The general manager of
19 that business at the time that supplies were ordered from one
20 of some fourteen or fifteen manufacturers that they did
21 business with was a woman by the name of Barbara who doesn't
22 have a Russian accent. She has a Latin accent because she's
23 Cuban. And they happened to use that phone number in the
24 business in Florida which was a lawfully incorporated business
25 that has nothing to do with this case, but they have this one

1 DME who says I spoke to somebody named Barbara, she had an
2 accent that might have been Russian, period.

3 So there's evidence of who the Barbara was and why
4 they used the phone number and it was in the legitimate
5 pursuit of a business in Florida. And the fact that the
6 professional defendant -- and I don't know this to be the case
7 -- but if the professional defendants paid for medical
8 supplies, durable medical goods for their patients, I don't
9 think that there's anything improper about that. They made
10 ado about this one manufacturer talking about one person named
11 Barbara who's not a party to the case.

12 MR. MARKS: That's the most -- that answer was worth
13 --

14 THE COURT: What is the business in Florida doing
15 ordering equipment?

16 MR. MARKS: That's what -- that answer was worth the
17 trip to New York, Judge, because --

18 UNIDENTIFIED SPEAKER: Yeah.

19 MR. MARKS: -- because every time we hear an
20 explanation, the explanations fall apart. The equipment
21 wasn't shipped to Florida. The equipment was shipped to the
22 Durable Medical Equipment defendants. The invoices for the
23 equipment show as the equipment that was shipped to New York.
24 And we have the invoices, Judge. They've been attached to
25 pleadings. It wasn't anybody in Florida.

1 The anti-aging spa, by the way, is owned by Olen
2 Rybak down in Florida. The equipment was shipped to New York
3 and was shipped to the Durable Medical Equipment defendants in
4 New York and provided to patients.

5 MR. FISHER: That may well be, Your Honor.

6 THE COURT: And paid for by the professional
7 defendants?

8 MR. MARKS: Paid for by some Durable Medical
9 Equipment. It's a hodgepodge. It's mixed up. Some -- it's
10 paid for by some Durable Medical Equipment providers, some
11 professional defendants. But when it's paid for by a Durable
12 Medical Equipment defendant, it may not be the Durable Medical
13 Equipment provider who is actually ordering the supplies or
14 getting the supplies. It's a mix. So maybe AB Medical Supply
15 writes the check, but the equipment's going to, you know, a
16 different Durable Medical Equipment provider or maybe, you
17 know, a PFJ, one of the doctor's PC is writing it and it's all
18 mixed up. And then there's a phone that's being used and it's
19 always the same phone. And that's how we got to the phone.
20 And --

21 THE COURT: Okay. That explains why you need those
22 records. And you're asking for all telephone records for --
23 actually, I'm not entirely clear what you're asking for.
24 Whose phones are you asking for records from?

25 MR. MARKS: We're asking for the phone records of

1 any defendant regarding any phone that was used to conduct
2 business at 1786 Flatbush.

3 MR. FURMAN: May I be heard? First, in my letter I
4 cite -- well, no, let me go back for a second. I'll be brief
5 upon this, but this is the first I've heard that they think we
6 waived the opportunity to object to this. I believe we
7 objected to it -- the waiver occurs when you don't object to
8 it in response, not, you know, move about it. The next step
9 is, well, okay, now you're going to move to compel me and
10 we're here today. So there's no waiver.

11 And in fact, I've cited three of I believe many
12 cases where courts have found that it's basically
13 disproportional, burdensome to have somebody to give them
14 their phone records. There's a privacy aspect under the
15 Storage of Electronic Communications Act against the carriers
16 giving them. And what we have now is one phone number, and
17 now he wants anything related to the business. But how am I
18 going to -- how's that -- how do I make that decision? Like
19 what's related to the business?

20 I mean let's assume -- I know with me, my phone
21 calls -- I have one cell phone, okay. I have some business
22 calls. There are some non-business calls. There are a
23 combination business calls. I think it's burdensome to ask
24 them to go through them and decide. They have enough here.
25 They don't need this minutia. This is disproportional. And

1 the cases so indicate. And it's just disproportional, and I
2 don't see any other way of determining it. They haven't been
3 specific. They just say business. Now we're limiting it to
4 business use. I still don't think that's a limitation that we
5 can live with. So I would ask that this aspect of the motion
6 to compel be denied.

7 MR. MARKS: Let me just speak briefly if you'd like,
8 Your Honor, to the cases. One, the case law actually is that
9 there is not -- the privacy interest and the content of your
10 communications which is what's protected by the communications
11 act. And the communication act also speaks to what
12 telecommunications organizations can disclose. It doesn't
13 govern what may be obtained by subpoenas, so it's not really
14 an appropriate standard.

15 The cases that counsel has cited, in those cases,
16 the reason it was either telephone records were deemed not
17 necessary is because the connections had already been
18 established. We have a world here, Your Honor, in which they
19 don't have any business records. They got nothing. We have
20 -- we don't have -- they don't have a general ledger. They
21 don't have billing software. They don't have anything that
22 establishes -- that we brought Mr. Balson in. He doesn't know
23 anything, as an example.

24 We're going to find that we're basically trying to
25 piece together from these various pieces. And you've seen how

1 these pieces have had to have been to figure out what was
2 going on in 1786. And so, that's why this situation is very
3 different from the situation of the cases that have been cited
4 by --

5 THE COURT: Other than Mr. Balson, have you deposed
6 any of the other people?

7 MR. MARKS: I'm sorry.

8 THE COURT: Have you deposed any of the other
9 defendants?

10 MR. MARKS: We have not yet, Your Honor; no.

11 THE COURT: Okay.

12 MR. FURMAN: Your Honor, you know, I have to say one
13 thing briefly. I'm not sure counsel appreciates that when he
14 says we have nothing, they have nothing, they say they have
15 nothing. And I said this to one of the State Farm attorneys.
16 That's the whole point. I mean we're telling you we don't
17 have it. We don't have any backup for checks that are going
18 out. You can use that. I mean use what you have. You keep
19 wanting more and more stuff that we don't have, number one.
20 And number two, our answers stand so use it. Take a
21 deposition, do what it is that you want to do with it. Let's
22 -- we'll go to trial. We'll be bound by it. That's all we
23 can say.

24 And telephone records, first of all, counsel is
25 incorrect. The Storage Communication Act does -- it has

1 certain exceptions. Civil subpoenas are not an exception to
2 the Storage Communications Act. And one of the cases so
3 cites.

4 And while there are each case has no particular
5 facts, I went into some in my letter. At the end, the court
6 held in and in particular, the Jones v. Montgomery County,
7 forced disclosure of irrelevant personal information in order
8 to secure a minimally relevant information poses a undue
9 burden. I don't know what else there is to say.

10 Here's another one. It was skeptical -- this court
11 was skeptical -- I'm not even giving you the cites here. This
12 court was skeptical that cell records were relevant to any
13 claim or defense. Let's remember that we're talking about a
14 pleading here. The claim is in the pleading. The defendant
15 is to the pleading, so why -- I mean this whole issue is about
16 medical necessity. Why are the phone records even relevant?

17 And that court, which is in a case called Howard v.
18 Seadrill, 216 WL 7012275, also says that discovery is limited
19 to matters that are proportional and the court determined that
20 the disclosure was not proportional, just like I'm saying
21 here. This goes beyond appeal [Ph.]. And there's just no
22 way. I mean the bank records, financial records, that makes
23 sense. And the court, you know, didn't, understandably so,
24 not order personal tax returns. It has ordered personal bank
25 accounts. So I think this goes on the side of the personal

1 tax returns. And it's just not proportional. I appreciate
2 it.

3 THE COURT: I guess my first question for you is
4 what do you actually expect to get from them in terms of phone
5 records? Because while I understand your position that the
6 phone records, meaning the toll records, could show
7 connections between people, you're not going to get toll
8 records from them. People don't have toll records for their
9 telephone numbers. You may get a bill, but that's just going
10 to tell you, you know, how much they paid for their phone and
11 who the subscriber on the phone is.

12 MR. MARKS: That's correct, Your Honor. It will
13 tell us who the subscriber is on the phone. And it should --

14 THE COURT: So just ask them an interrogatory
15 question what phone numbers are associated with any business
16 related conversations.

17 MR. MARKS: We have, and we've not received
18 responses back.

19 THE COURT: Okay. Well, that's a different issue.

20 MR. FURMAN: And I'm going to -- I don't know -- he
21 says he doesn't receive a response. I don't believe that
22 there was anything I didn't respond to one way or the other.
23 However, if he wants to ask us who -- I guess if he wants to
24 know a cell phone number, I don't know what he'd do with that,
25 but -- and why doesn't he ask who the -- why doesn't he ask

1 who the subscriber is. That must be what he's looking for.

2 THE COURT: I mean I'm not sure what else he could
3 get from the records that you would have. I mean subpoenaing
4 a telephone company would get toll records, but I think it's
5 perfectly legitimate to specify what phone were used for
6 purposes of the businesses and by who or who they're
7 subscribed to. So if you limit the request to that, I think
8 that's a valid request.

9 MR. FURMAN: Okay. I'm sure counsel will formulate
10 a request, and we'll respond based upon Your Honor's
11 instructions.

12 MR. MARKS: So, Your Honor, that's Interrogatory --
13 so Interrogatories 2 and 3 asked for emails and phone numbers
14 used by the professional defendants, and these were objected
15 to. And counsel said he was going to consider providing
16 amended responses to those interrogatories. So if he'll
17 provide amended responses to those interrogatories identifying
18 emails and phone numbers that were used, we'll take that and
19 we'll go from that. The only thing that we won't get -- and
20 look, if they have telephone records, it would show
21 potentially numbers dialed, because sometimes phone records do
22 contain that information and the length of those calls.

23 THE COURT: You're also talking about stuff that
24 happened years ago. I don't know anybody who keeps their
25 phone records that long.

1 MR. FURMAN: Yeah, I mean how much of that do we
2 retain.

3 THE COURT: Well --

4 MR. FURMAN: If you ask me where my phone records
5 were from two years ago, I would have a hard time.

6 MR. MARKS: But, look --

7 THE COURT: Even the phone companies don't keep
8 their records that long.

9 MR. MARKS: And that's very true, which is why one
10 of the reasons we said, look, when we met and conferred, said,
11 look, if you don't have these records, tell us whether you
12 have them or not because if you don't have them, then we're
13 wasting our time fighting about them, right. We've asked
14 that. So might I suggest this. Why doesn't -- if he answers
15 Interrogatories 2 and 3, okay, which ask for emails and phone
16 numbers, and then why doesn't he tell us whether telephone
17 records exist or not and if they don't exist, then this, you
18 know, becomes a non-issue. And if they do -- we'll take a
19 look at the list of phone numbers that they've identified and
20 then we'll confer with him on whether we want to move it to
21 the next step.

22 MR. FURMAN: Your Honor, I can't help but note that
23 counsel has snuck in there the concept and word of emails. We
24 never talked about emails. There's no emails mentioned in his
25 letter. I have not briefed the issue of emails. And I would

1 like that opportunity if he's going to press that. And I will
2 tell you now I'm not giving them, and I know a little bit
3 about the law but I don't have cites in front of me. He's not
4 getting email addresses from us.

5 MR. MARKS: Well, then let's talk about it right now
6 because that is --

7 MR. FURMAN: No, I want to brief the issue. You're
8 raising it for the first time today, and I want to brief the
9 issue.

10 MR. MARKS: It is not -- we're not raising it for
11 the first time. It's in our letter. It was raised on April
12 19th. We raised it with you on April 19th. We asked for a
13 response. It's attached to our letter in which we say we want
14 full responses to our interrogatories. It's there. It's
15 before the Court now. Let's do it right now.

16 THE COURT: The April letter wasn't to me.

17 MR. FURMAN: Your Honor, I would like to be heard by
18 letter brief that it's hidden in a letter in an exhibit, okay.
19 He had every opportunity to put it up-front in his primary
20 letter which is -- which lists the telephone records. And I
21 think it's disingenuous to have now raised emails.

22 MR. MARKS: We had --

23 MR. FURMAN: Why didn't he even talk about this when
24 he opened up today for god's sake?

25 MR. MARKS: Because we had no idea he had an issue

1 with emails because he wouldn't return a phone call or answer
2 an email since April 19th, which is why --

3 UNIDENTIFIED SPEAKER: That's why --

4 MR. MARKS: -- which is why we --

5 MR. FURMAN: That's absolutely untrue.

6 MR. MARKS: -- which is why we had to file a motion
7 to compel and which is why we're here. The only issues we
8 knew he had were the issues that we raised in our letter
9 because those are the only issues he identified for us. We
10 couldn't hear from him. He went radio silent, and that's the
11 reason --

12 MR. FURMAN: I did not go radio silent.

13 MR. MARKS: -- we had to file a motion --

14 MR. FURMAN: It is for that reason that they -- we
15 responded to the second set of interrogatories in --

16 MR. MARKS: We couldn't even schedule a meet and
17 confer.

18 MR. FURMAN: -- in the month of May.

19 MR. MARKS: We couldn't even schedule a meet and
20 confer with him.

21 THE COURT: Look, I'm not going to deal with the
22 email issue right now because, frankly, there's nothing in
23 front of me and I'm not going to just address that issue
24 without looking at it.

25 For the telephone records, limit the request to a

1 telephone number and subscriber for any phones used in the
2 business during the relevant time period and you'll produce
3 that. But just as an aside, I don't see what the problem is
4 with them asking for any email addresses that were used for
5 purposes of the business. Now you can object if they try to
6 get, you know, the content of emails, but actually asking for
7 what email accounts were used for purposes of the business is
8 perfectly a legitimate discovery request.

9 MR. MARKS: Well --

10 THE COURT: Isn't that what you're asking for?
11 You're not asking for emails.

12 MR. MARKS: Well --

13 MR. FURMAN: That would be next.

14 THE COURT: Not in that request anyway.

15 MR. MARKS: Well, we certainly are asking for
16 communications. So to the extent that there are email
17 communications responsive to the discovery, are there email
18 communications that are responsive to this discovery that
19 have not been produced and are not going to be produced?

20 MR. FURMAN: I'm going to want to brief the issue
21 because they're not --

22 MR. MARKS: Well, do they exist?

23 MR. FURMAN: Pardon me.

24 MR. MARKS: Do they exist?

25 THE COURT: I think we're talking about two totally

1 different things.

2 MR. FURMAN: I'm not -- I can't tell you if they
3 exist. I'm assuming that the clients have email addresses or
4 multiple email addresses, for all I know. And --

5 THE COURT: Look, first of all --

6 MR. FURMAN: This is whole other area.

7 THE COURT: -- the requests you're talking about are
8 not the requests that are in front of me right now, so.

9 MR. MARKS: And here's why this is an issue, Your
10 Honor, okay, because we have filed a motion to compel
11 production of documents responsive to all of our document
12 requests. We served document requests in this case in April of
13 2019, so it's been more than a year. To the extent that there
14 are documents responsive to that document request that are
15 emails, those should have been produced in June of 2018, okay.

16 Now, if they exist and they haven't been produced,
17 we ought to know. Now, counsel has said we gave them
18 everything back in June. I've supplemented with a few more
19 things on Monday, but I've produced everything that's
20 responsive. What I'm hearing now about emails gives me some
21 cause for concern that they have not produced everything. The
22 relief that I've asked for today is for them to produce all
23 documents responsive to our document requests that were issued
24 in April of 2019. If a document is an email and it's
25 responsive to a document request, it should be produced.

1 MR. FURMAN: And I objected to that request, and it
2 was not reiterated in today's motion. As Your Honor has
3 noted, it's not in front of Your Honor at this point. And by
4 just incorporating it in reference from a ten-page letter in
5 April 19th, okay, if they wanted that done today, they should
6 have sat down and written a motion to compel that said this is
7 it, this is what we want.

8 And I'll go even back further. I didn't -- on April
9 19th, there wasn't even a -- I didn't even know it was going
10 to be -- there was a phone call that said we'd like to talk to
11 you about a few things. And before I knew it, I was on the
12 phone for two hours. And then when I got a letter, I was
13 informed that it was a meet and confer. And so it wasn't even
14 done in that fashion.

15 THE COURT: A meet and confer doesn't have to be
16 formal. But the problem with this is, you know, electronic
17 discovery is a lot more complicated than just asking for
18 documents. You know, there's protocols that need to be in
19 place. You need to identify where information might be
20 located, custodians. You can't just have an all-documents
21 request that is supposed to also apply to emails because
22 there's no way to comply with that other than physically
23 searching every single email within the company.

24 So if you want electronic documents like emails or
25 texts, you have to make specific requests, see if you can

1 agree on search terms, and do electronic discovery the right
2 way.

3 MR. MARKS: Correct, Your Honor, but the way this
4 works is so we got document requests. Some of the documents
5 that we have are emails, and we've begun the process of
6 searching and reviewing our emails because we are -- we did --
7 it's not like we got a document request that said produce
8 emails, right. So we're going to go through them and do the
9 review and see that they're produced. We don't need email --

10 MR. FURMAN: That's right. And they asked me --

11 MR. MARKS: We don't need a --

12 MR. FURMAN: -- for the search --

13 MR. MARKS: I'm speaking.

14 MR. FURMAN: -- if I agreed on the search terms.

15 MR. MARKS: I'm speaking. So, if I've asked -- if
16 we've asked for a document request -- for example, among our
17 documents requests is produce all communications between and
18 among the defendants. And that's a perfectly legitimate
19 request, and I even think they're included but not limited to
20 the following subjects: the treatment of patients at 1786.
21 Now if there's an email that's responsive to that request,
22 then it was incumbent upon defendant to say to us, you know
23 what, there are emails responsive to that request and we're
24 going to need to talk about a protocol to produce those
25 emails. Otherwise, they just have to produce them.

1 So if what I'm hearing -- so the fact that we didn't
2 get them left us under the impression that there weren't any.
3 I'm now hearing in court for the first time that they may
4 exist. If they do exist, then they should be produced. And
5 it's not -- he hasn't been -- it's not like we say give us a -
6 -- we issued a document request that said produce emails.
7 It's produce communications. And so those need to be
8 produced.

9 THE COURT: I don't know what your response to the
10 --

11 MR. FURMAN: Judge?

12 THE COURT: -- request for communications was.

13 MR. FURMAN: Look, I mean we've responded. This is
14 the first I've --

15 THE COURT: What other documents do you think there
16 would be if they're asking for communications? I mean I
17 assume they weren't asking for oral recordings. What other
18 communications, what other documents would exist if somebody
19 asked for communications? It's going to be text messages or
20 emails.

21 MR. FURMAN: But I believe I've responded to that.

22 THE COURT: Well, what was your response?

23 MR. FURMAN: I have to go back and look, but I think
24 it's that there are no responsive documents.

25 THE COURT: But that's not right because if somebody

1 asked for a communications and there's emails, that's a
2 communication.

3 MR. FURMAN: I don't know that there are emails.

4 THE COURT: I don't know either, but you're just
5 telling me you didn't search so how do you know?

6 MR. FURMAN: Because I've spoken to the defendants.

7 THE COURT: And the defendants have represented to
8 you that they don't have any emails between themselves at all?

9 MR. FURMAN: Themselves, yes.

10 THE COURT: And any of the other defendants?

11 MR. FURMAN: Yes.

12 THE COURT: Okay. Well, if that's true, then that's
13 your answer. It is what it is. You can ask him about it at
14 deposition if you want.

15 MR. MARKS: Then under the circumstances, and we can
16 -- if you want -- if we want to brief this and argue it on
17 another date, I'm happy to --

18 THE COURT: You don't have to argue it. I'm --

19 MR. MARKS: Well we -- right.

20 THE COURT: You've asked for communications. We're
21 all on the same page here as to what communications mean. If
22 there are communications in the form of emails or text
23 messages that are responsive to your request and they haven't
24 produced them, then they're in violation of the court order.
25 They're represented that there are no such documents. You can

1 believe them or not, but that's the answer. And you can
2 certainly ask about it when you depose them. You might want
3 to expand that to every possible method of communication since
4 I have other cases where people communicate only by things
5 I've never heard of like WeChat.

6 MR. FURMAN: I'm sorry, by what?

7 UNIDENTIFIED SPEAKER: WeChat.

8 THE COURT: WeChat. You have no idea what I'm
9 talking about, do you? See, I was in the same position as you
10 a few months ago.

11 MR. FISHER: The only way you know about all the
12 methods of communication is if you have a teenage child.

13 THE COURT: That's exactly right. And my kids are
14 not old enough yet, so.

15 MR. FISHER: I was stuck in an airport recently and
16 my laptop froze. There was a woman across from me who had a
17 kid who was about nine or ten years old.

18 THE COURT: And he fixed your laptop for you, didn't
19 he?

20 MR. FISHER: I said can I borrow your kid for a
21 minute. She said why. I said because he's going to know how
22 to solve this problem on this iMac for me.

23 THE COURT: Yeah. I'll give you a very funny
24 example of that. Remember all that litigation that was going
25 on when, you know, the government was trying to break into

1 those Apple iPhones. They couldn't break into it? My three-
2 year-old daughter can somehow always get into my wife's iPhone
3 despite not having the password. I have no idea how she does
4 it. I can't do it. But somehow she manages to get into the
5 phone without entering the password. I don't know. I'm like
6 clearly the FBI just needed a three-year-old to get around the
7 password.

8 MR. FISHER: Well, this nine- or ten-year-old, it
9 took him literally two minutes to unfreeze my laptop.

10 THE COURT: I thought I was tech savvy, but clearly
11 I'm not.

12 All right. So, look, I mean it's a straightforward
13 request. Communications clearly includes things like emails,
14 so if the answer is there's none, there's none. But, you
15 know, I don't want there to be any misunderstanding as to
16 what, you know, that means.

17 MR. MARKS: The next is we've asked for -- so this
18 is another area in which we appear to be in dispute, and
19 that's records related to malpractice and negligence claims.
20 We believe that those records are relevant for a variety of
21 reasons. If someone has made a malpractice or a negligence
22 claims against any of the professional defendants, that would
23 be relevant in a variety of ways. We've argued the telephone
24 records so I'll keep myself very brief, Your Honor.

25 Number one, to the extent the case is about medical

1 necessary, if there's any issue about malpractice or
2 negligence, that could go to certainly competence or ability
3 of any of the providers. And while there may -- you know,
4 they may have a very good defense in those claims and there
5 may be no merit whatsoever to those claims. At this point,
6 we're not testing whether there's merit to those claims.
7 We're testing as to whether they exist. And if they exist,
8 that might provide some evidence that might have bearing on
9 the ability or skill of these providers to provide the medical
10 treatment that is the subject of this case. That's number
11 one.

12 Number two, if any of the providers are under or
13 have been subject to these suits or proceedings or a lot of
14 them, for example, that would make them more susceptible or
15 more likely to be pliable or necessary to work for a
16 layperson. That is a very common pattern that we see, and
17 laypeople are able to get doctors to work for them who are
18 having a tough time getting a job somewhere else. And that
19 would be an indication that they would work for someone, and
20 that person would be in a position to give the direction and
21 control about the kind of care they render should they render
22 care the patient needs or should they render care that puts
23 money in the pocket of the person who owns, controls, and
24 therefore, that would also be relevant as well.

25 And so, for all of those reasons, it would be -- and

1 it would be relevant and for those reason, we think that it's
2 appropriate. And in other cases, this kind of evidence has
3 routinely been allowed, again, for purposes of discovery at
4 this point.

5 MR. FURMAN: May I be heard, please?

6 THE COURT: Sure.

7 MR. FURMAN: This is yet another example of this
8 duality, just in that argument along. And I think you
9 probably know what I'm going to say, so I'll be brief. But
10 first off is he starts off with, well, the issue is going to
11 be medical necessity so the knowledge and competence of the
12 provider is important. Let's assume that's the case, but you
13 know that that's not really what they've been pursuing in this
14 case. They've been pursuing there's somebody else in control.

15 THE COURT: Well, it's not exclusively what they've
16 been -- so.

17 MR. FURMAN: So -- and I don't see how -- you know,
18 the classic thing, they can't really have it both ways. You
19 know, I didn't mention this in my papers, but there's an
20 appeal. We have an appeal in the Second Circuit on this case.

21 THE COURT: I'm sorry; we have an appeal of what?

22 MR. FURMAN: We have an appeal in the Second Circuit
23 on this case, on the collateral issue.

24 THE COURT: In this case?

25 MR. FURMAN: Yes. And we're just finishing --

1 MR. MARKS: The district court's injunctive relief
2 has been appealed to the Second Circuit.

3 MR. FURMAN: And in that appeal, they actually
4 distinguish because they need to -- they distinguish this case
5 from the cases that they say, well, that's a case that has
6 nothing to do with -- and I have to read you the portion of
7 the brief -- with someone that's alleged to be in control of
8 the PC.

9 So, you know, I don't think you can play it fairly
10 when you're playing it on both sides. And malpractice -- and
11 I think that's -- people have insurance. Why don't they ask
12 us if we have malpractice insurance? I mean that would be
13 more important. I mean if they have malpractice, then --
14 insurance, then the motivation argument goes out the window.
15 And --

16 THE COURT: Well --

17 MR. FURMAN: And then --

18 THE COURT: -- maybe you have, maybe no.

19 MR. FURMAN: And then let me say this.

20 THE COURT: If you have enough malpractice claims
21 against you, your insurance goes through the roof, assuming
22 you can even get it.

23 MR. FURMAN: This motivation argument is just all
24 over the place. I'm hearing it all the time from them. It's
25 motivation, it's motivation, it's motivation. I mean

1 everything's motivation. You want to earn a dollar from
2 legitimate medical services, you have motivation to do the
3 services. And I say this in my letter, motivation is not an
4 element of a RICO case. And so why they keep --

5 THE COURT: It may not be an element, but it's
6 always --

7 MR. FURMAN: Pardon me.

8 THE COURT: Motivation -- motive is always a
9 relevant issue, whether it's an element or not. You know,
10 there's plenty of crimes where motive is not a requirement but
11 that doesn't mean it's irrelevant. I'm not saying I
12 necessarily agree that this is motive evidence, but I don't
13 think you can say just because it's not an element of the
14 offense, it's not relevant for the claim.

15 MR. FURMAN: Well, you can -- it's the most elastic
16 thing that will give you just about anything you'd like to
17 say. It'll open up every financial record.

18 THE COURT: But as you keep pointing out, the
19 allegations in the complaint relate to medical necessity. So
20 asking for any prior instances of, you know, allegations of
21 malpractice or negligence on the behest of the doctors, I mean
22 I don't see how that's not relevant. I'm not saying it's
23 going to necessarily be admissible. I guess it depends what's
24 there. But, you know --

25 MR. FURMAN: But how come we're going back to the

1 discovery now on the complaint when we didn't have the
2 discovery on anything else that has to do with the complaint?

3 THE COURT: I don't think that the theories that
4 they are articulating are mutually exclusive. There is
5 clearly an element here of medical necessity. I mean as you
6 point out, that's the primary contention in the complaint.
7 But that doesn't mean that there can't also be an issue in
8 terms of, you know, ownership of these entities or control of
9 these entities by a non-doctor, which is one of the issues.
10 They're not mutually exclusive. There could be issues with
11 both, you know. And more than any of the other issues, I mean
12 this one directly relates to the allegations in the complaint
13 so I'm not really sure what your objection is to it.

14 MR. FURMAN: My objection is that malpractice
15 history does not provide motivation because they may be
16 insured and they haven't even asked about insurance. So I
17 don't see the motive aspect of that. And --

18 THE COURT: Put aside the motive aspect of it. I
19 mean it's the same as if, you know, you have a police
20 brutality case and they're asking for a prior disciplinary
21 history of the police officers. It doesn't mean it's going to
22 necessarily be admissible, but it's certainly relevant for
23 discovery purposes.

24 MR. FURMAN: Medical necessity and medical
25 competence are two different things. Negligence is not

1 evidence that somebody did something that was medically
2 unnecessary.

3 THE COURT: Yeah, but it could be.

4 MR. FURMAN: Well, their allegation is that it's not
5 negligence. It's intentional.

6 THE COURT: And maybe some of the prior malpractice
7 claims were intentional. I don't know. I don't know what's
8 there, if there is anything.

9 MR. FURMAN: I mean I'm not so sure by definition a
10 malpractice claim could be intentional. I mean it's medical
11 negligence.

12 THE COURT: Well, look, if somebody does a
13 procedure, I mean you can -- maybe you can argue it's, you
14 know --

15 MR. FURMAN: An assault?

16 THE COURT: No. You can argue that it's negligent.
17 Maybe they did it -- obviously they're doing a procedure
18 deliberately, so it's not a question of mistakenly doing
19 something. Whether it's medically necessary or not, I mean
20 there's -- I guess you can make the argument that, you know,
21 performing a medically unnecessary procedure could be a
22 deliberate act in order to benefit or it could be negligence
23 on the part of a doctor who performs something that he didn't
24 need to perform because he didn't know any better. It could
25 theoretically be either/or.

1 I mean they're making the allegations that these are
2 deliberate, you know, acts but I don't know what -- I don't
3 know what the prior malpractice -- assuming there even are
4 any. I don't know if there are or not. But if there are
5 prior malpractice claims --

6 MR. FURMAN: Well, I don't either except I mean does
7 the word phishing expedition come to mind?

8 THE COURT: Look, I think of all of the arguments
9 you've made, this is the one category that I think that
10 argument makes the least amount of sense. I'll give you some
11 of the other instances where, you know, you can make a
12 coverable argument that things are going far afield, but this
13 one I think is directly relevant to the specific allegations
14 in the complaint. So I don't think you can make that argument
15 here.

16 MR. FURMAN: All right. I hear you, Judge. I just
17 wish that we would have all of the discovery rulings based
18 just upon the allegations in the complaint. And I'm not so
19 sure that they have been.

20 [Pause in proceedings.]

21 THE COURT: All right.

22 UNIDENTIFIED SPEAKER: I'm not going to respond --

23 THE COURT: Next issue.

24 MR. MARKS: Okay. All right. They've -- we've
25 asked for diary and calendars of the defendants and we've told

1 that -- we were told that all but one of the defendants didn't
2 have any. We were told that one defendant did, and then we
3 were told that maybe this was an error, that maybe he didn't.
4 And we were told we were going to get confirmation on whether
5 he did or he didn't. And if he did have it, we were told we
6 were going to get it. And if he didn't have it, we were told
7 they were going to amend their answer.

8 So this seems to be a relatively straightforward
9 one.

10 MR. FURMAN: I'll amend the answer as need be.

11 THE COURT: All right.

12 MR. MARKS: Okay. We asked for information
13 regarding licenses. I believe that it asked for both
14 information related to licenses and documents related to
15 license applications. I believe we were told that they have
16 no documents responsive regarding the applications, but we
17 were going to be told that we were going to get confirmation
18 of that and we were going to be given all licenses. I believe
19 as of Monday, we have been given all licenses, but we need
20 confirmation that we have all licenses and that there are no
21 application documents. If that happens, we'll be done with
22 that.

23 MR. FURMAN: No problem.

24 THE COURT: All right. Next issue.

25 MR. MARKS: Fine. All right. We were told that

1 there are -- that they have no possession, custody, and
2 control of transcripts. However, there have been various
3 mentions over the course of these proceedings of transcripts.

4 THE COURT: Transcript of what?

5 MR. MARKS: Transcripts or summaries related to
6 testimony of any of the defendants or related to treatment at
7 1786. So the deposition, the EO transcripts, we were told
8 that there aren't any, that they don't have any. And we --
9 and but we raised, for example, that there may be an EO
10 transcript or some -- basically the prior statements of the
11 defendants or concerning the activity oat 1786. We were told
12 that he was going to confirm whether they existed or not.

13 MR. FURMAN: No, I don't believe I said that. I
14 said that there were none. I said in writing that there are
15 none, and that's the end of it. Now I'm hearing in their
16 response that at the hearing on April 17th in this court, Mr.
17 Fisher described testimony by a Jaime [Ph.] Gutierrez, Dr.
18 Gutierrez in connection with the lawsuit in which Les Levine
19 did work. And it was Les Levine's work on that lawsuit was
20 apparently paid for by some of the professional defendants.
21 At a minimum, the transcripts in that case would be the
22 responses.

23 I'm not sure that that follows. I mean it's not
24 them testifying if there were transcripts. If the --

25 THE COURT: I'm totally confused now.

1 MR. FURMAN: Pardon me.

2 THE COURT: What transcripts from what proceedings
3 are we talking about here?

4 MR. FISHER: There is a case pending that was
5 brought by a doctor by the name of Jamie Gutierrez who is
6 seeking to avoid paying me and Oleg Rybak for services that we
7 provided. That case is pending in Bronx County. It was
8 brought as a special proceeding some three and a half, almost
9 four years ago. So under [indiscernible] in the state court,
10 the case is about four years, three and a half, four years
11 beyond the time when it was supposed to be resolved.

12 THE COURT: Makes me feel a little bit better about
13 how long this case has been going on.

14 MR. FISHER: So in that case, the defendants were
15 afforded the opportunity to take Dr. Gutierrez's deposition,
16 and that's the transcript that I was referring to in this
17 unrelated case that has zero to do with this case and this
18 complaint. That's the only transcript that I'm personally
19 aware of that exists with -- and that's a case in which none
20 of the providers, neither the professional defendants nor the
21 DME defendants are a party to or -- and it's a single-issue
22 case basically -- well, actually it's a two-issue case. The
23 first question is are we entitled to be paid, and the second
24 question is how much, who gets what out of an escrow fund
25 that's being maintained. And that's all the case is about.

1 It's a fight over that.

2 MR. MARKS: That's not quite exactly right, Your
3 Honor. That case -- in that -- Dr. Gutierrez is a doctor
4 operated at 1468 Flatbush. That's the predecessor location to
5 1786. Among the things that Dr. Gutierrez has claimed is that
6 his practice was owned and controlled by Oleg Rybak and maybe
7 others, okay. And as you may remember, one of the interesting
8 things that we learned in this courtroom was that Les Levine
9 was a private investigator who was hired to help defend the
10 Gutierrez lawsuit. Les Levine was paid for his services by
11 the defendants who operated at 1768 Flatbush.

12 THE COURT: Aren't those the same defendants, the
13 named moved from one to the other?

14 MR. MARKS: Some did, some didn't.

15 MR. FISHER: And in that case, under oath, Dr.
16 Gutierrez testified that neither Tatiana Rybak nor Oleg Rybak
17 controlled this practice, that he didn't fee-split with either
18 one of them, that he controlled his own billing, that he
19 controlled his own mailbox, and that they had absolutely
20 nothing to do with his practice, even though it had been
21 alleged in the complaint that there was this outside
22 interference. He had four or five lawyers in that case
23 starting with the Kasowitz firm which withdrew the complaint.
24 And in 35 minutes, he responded to all of my direct questions
25 allegedly related to -- well, not allegedly. They were

1 directly related to the subject matter that Mr. Marks just
2 referred to. And the transcript so reflects that.

3 MR. MARKS: That's the transcript he referred to.
4 After he referred to it, we went and read the transcript. Mr.
5 Fisher has not accurately represented the transcript, and if
6 we need to tender the transcript to the Court, we can. I
7 don't think it's necessary. That's not an accurate reflection
8 of what happened in the transcript. We can deal with it at a
9 different point.

10 I think for present purposes, the appropriate point
11 -- the really only relevant issue is this. Here's the
12 document request: "All transcripts or summaries of testimony
13 concerning any of the defendants in the case or concerning
14 treatment that occurred at 1786 Flatbush," okay, "concerning
15 any defendant or treatment that occurred at 1786 Flatbush."
16 That's all it asks for. So either he's got it or he doesn't.
17 Answer the document request, provide -- he's previously told
18 us Dr. Lacina has documents responsive to this request. If he
19 does, produce them. If he doesn't revise his answer. That's
20 it.

21 MR. FISHER: Just to finish up on the Gutierrez
22 subject, Gutierrez never practiced at 1786. And I sincerely
23 doubt that any of the professional defendants -- I've got a
24 copy of the transcript in that particular case in which
25 they're not involved.

1 THE COURT: All right.

2 MR. FURMAN: I can't find my response here, and I'm
3 surprised to hear that there was anything affirmative. But
4 I'll clarify it.

5 THE COURT: Okay. Well, check. If there's nothing,
6 clarify it. If there is, then produce it.

7 MR. FURMAN: And there were a couple of scrivener's
8 errors in there, I know.

9 THE COURT: All right.

10 MR. FURMAN: I can't exactly -- there were 38 sets
11 of document requests, and I'm sure I made a mistake or two.

12 THE COURT: Okay. Next issue.

13 MR. MARKS: Next is documents related to cash
14 transactions. And so we have served documents requests that
15 says give us documents related to all -- to transactions that
16 were engaged in involving cash or currency. The objection
17 that we got back was, well, everything relates to cash because
18 sooner or later everything turns into cash. And as we
19 attempted to convey in the conversations that we had pursuant
20 to a meet and confer is no, no, no, no. We're talking about
21 -- you -- it's the common understanding of what --

22 THE COURT: Talking about bags of -- brown bags of
23 cash being exchanged.

24 MR. MARKS: Brown bags of money. So you can play --
25 we can play lawyer games about, oh, everything sooner or later

1 relates to -- that's a lawyer game that we can play. We know
2 what cash is.

3 MR. FURMAN: It's not a lawyer game. It's a poorly
4 worded --

5 MR. MARKS: Excuse me. I'm speaking.

6 MR. FURMAN: It's not a lawyer game. It's a poorly
7 worded question.

8 MR. MARKS: I'm speaking. I didn't interrupt you.
9 As long as you've gone on, I haven't interrupted you.

10 MR. FURMAN: You've gone on longer than me.

11 MR. MARKS: And so we said you know what the cash
12 is, okay. And here's the reason there are cash transactions
13 because there's been a lot of evidence of cash transactions.
14 Number one, we have a number of different defendants have used
15 United Check Cashing, okay. It's a check cashing service, and
16 they used a particular individual who's cashed all their
17 checks, a man by the name of Roman Winetrout [Ph.]. Vasila
18 Queen who you're going to hear is the subject of the motion
19 that we're going to be dealing with at a later hearing, Vasila
20 Queen received checks written from the defendants including
21 the professional defendants that were written payable to cash
22 that she took and deposited into her account.

23 Natasha Toecarr [Ph.] testified that she told Dr.
24 Gutierrez, the doctor that we've heard about, that Tatiana
25 Rybak took providers' checks when she was in 1468 and cashed

1 them and had a relationship with a Lister [Ph.] Moore who was
2 a bank officer at HSBC Bank who she used to cash checks for
3 her. Les Levine, another individual that we've been talking
4 about, received checks from the defendants payable to cash
5 that he deposited into his account.

6 So we have and so we've got checks written to cash.
7 Now, if the only documents they have related to cash are
8 checks that say written to so-and-so payable to cash, that's
9 fine, produce that and say that's the universe, okay. Then we
10 know there are no other documents related to cash and that's
11 probably all there is because the reason you engage in cash
12 transactions is so that there isn't any other paperwork. And
13 that's fine. That may be the answer, and we'll accept that
14 answer and that's fine.

15 But if they're going to claim down the road that,
16 yeah, I generated cash and I used it for some legitimate
17 purpose, I bought something legitimate with my cash when I
18 created a cash -- I did something -- well, now's the time to
19 put up and show us what it is you did with that cash, the
20 legitimate purposes you made with that cash. I'm assuming
21 there's nothing, and if there's nothing, that's consistent
22 with our theory.

23 But if they're going to claim as a defense down the
24 road, yeah, I had a legitimate use of my cash, well, then
25 let's see it now. What's the documents that you have that

1 supported your use of cash? Why do you buy that thing? Why
2 did you pay that person in cash as opposed to not? What's the
3 documentation that establishes that? Again, if there's
4 nothing, I suspect there's nothing, and that's what we've
5 asked for. It's a legitimate request. It's very common in
6 cases like this. Let's get them.

7 MR. FURMAN: And the answer is ask it at a
8 deposition. You have the checks, you have these going to the
9 check cash. Ask them what they did with it. I mean their
10 concern at some point in time was that, well, we used -- I
11 used some cash to buy equipment. Okay, fine. Ask them at a
12 deposition. It's not appropriate to ask them in an
13 interrogatory. And I've referred them to the checks, and they
14 took the checks. So at this point, we're beyond written
15 discovery. I mean ask the question.

16 MR. MARKS: It's not an interrogatory. It's a
17 document request.

18 THE COURT: It's a document request, yeah. They're
19 asking for any documents.

20 MR. FURMAN: Even worse.

21 THE COURT: Well, I don't know. I mean if there's
22 nothing, then that's the answer. I would expect that there
23 would be nothing because if it's in cash, there wouldn't be
24 documents unless somebody's got a handwritten ledger
25 somewhere.

1 [Pause in proceedings.]

2 THE COURT: I mean you've got the bank records, so I
3 think what they're asking for is if there's any records of
4 cash transactions that's not reflected in the bank records.

5 MR. FURMAN: If they'd asked that question, I would
6 have been able to answer it more succinctly. But that's not
7 the question they asked. They asked all documents related to
8 any transactions was generated cash or currency. That's
9 overbroad by definition. And, you know, this question is such
10 a poorly worded --

11 THE COURT: Look, I'm not going to disagree with
12 you. It's a badly worded question, but I don't think you need
13 to have litigation over every badly worded interrogatory
14 question or, quite frankly, I would be out of a job because I
15 wouldn't be able to handle the volume of hearings I'd have to
16 have. I mean frankly, I look at interrogatories that people
17 file as exhibits and I think at least half the questions are
18 badly worded.

19 So you pick up the phone and you clarify what the
20 issue is, what do you really want, what do you really need
21 here.

22 MR. FURMAN: Well, we heard that so can you --

23 THE COURT: And if there's a dispute, then bring it
24 to me. But like, you know --

25 MR. FURMAN: Well, can you then reword the question

1 and I'll respond?

2 MR. MARKS: No. Answer -- the document request says
3 produce documents -- he understands what cash is. He's
4 playing games here. Just respond to the document request that
5 says produce documents, and I don't have the exact words in
6 front of me. It is not as he has phrased it. If you've got
7 documents that are related to cash or cash transactions, I
8 think it says related to your business, produce them. And if
9 there aren't anything else, then just say I've produced
10 everything. It's the bank records, you got them. And then
11 we're done and we can move on.

12 [Pause in proceedings.]

13 MR. FURMAN: I don't see why the question should not
14 be worded so we can intelligently respond.

15 THE COURT: I don't have the question in front of
16 me, so --

17 MR. FURMAN: Sorry.

18 THE COURT: I don't have the question in front of
19 me, so I'm not --

20 [Pause in proceedings.]

21 MR. FURMAN: I have the question in front of me,
22 Judge. It's in my --

23 THE COURT: Okay. What is it?

24 MR. FURMAN: I mean I have it sitting here.

25 THE COURT: I see.

1 UNIDENTIFIED SPEAKER: Is there any chance we could
2 take a five-minute break so --

3 THE COURT: We can if you want. You don't even need
4 to be here anymore.

5 UNIDENTIFIED SPEAKER: I'd like to keep --

6 UNIDENTIFIED SPEAKER: Well, I'm totally amused,
7 Your Honor.

8 MR. MARKS: All documents relating to any
9 transactions which generated cash or currency to be used in
10 any way by or for your business including but not limited to
11 any transaction with any check casher or any entity which
12 involved the exchange of a check for cash.

13 THE COURT: Honestly, here's why I think this
14 question's overbroad. All documents related to any
15 transactions generated cash to be used for your business would
16 technically apply to every single business transaction that
17 company engaged in which the purpose of which is to generate
18 cash for use in the business. That's not what you want. I
19 know what you're asking for, but the question as worded is
20 overbroad.

21 [Pause in proceedings.]

22 MR. MARKS: All right. Well --

23 THE COURT: Just hold one for a few minutes. We can
24 take a break.

25 MR. MARKS: Are we taking a break?

1 THE COURT: Yeah.

2 (Off the record at 2:21 p.m.)

3 (Back on the record at 2:35 p.m.)

4 THE COURT: Okay. Where were we?

5 MR. COOK: Yeah, I let him know that we were here
6 and ready to proceed.

7 THE COURT: Sorry, what was that? Oh, Mr. Furman's
8 not here yet.

9 MR. COOK: Yeah, counsel for the professional
10 defendants, I let him know that we were here and ready to
11 proceed.

12 THE COURT: Okay. We'll just wait for him.

13 MR. COOK: He should be here in a minute.

14 MR. FISHER: Thanks for the break, Judge.

15 THE COURT: No problem.

16 [Pause in proceedings.]

17 MR. MARKS: Ready, Your Honor.

18 THE COURT: Okay. Where did we leave off?

19 MR. MARKS: So a couple of things, Your Honor.

20 First, I do want to correct the record because I believe I
21 misspoke about something earlier, and I do want to clarify the
22 record. Earlier when I mentioned that I had reviewed the
23 transcript in the proceedings involving Gutierrez and his suit
24 against Olen Rybak and Fisher, I actually have not seen that
25 transcript. There is another transcript. So to the extent I

1 referenced that transcript, that was I was mistaken. There
2 may be -- this transcript obviously I'd like to see, but to
3 the extent I've referenced what was in that transcript, I may
4 have misspoken. So I retract what I said there.

5 MR. FISHER: And if I could be helpful to Mr. Marks,
6 I would tell him if you're looking at the final transcript,
7 the second day transcript, for the matters that I referred to,
8 it's the last 30 to 35 minutes of the day. And it could not
9 be any clearer.

10 MR. MARKS: We'll see and I'll review, but that's
11 not -- all right. So, let me address --

12 MR. FURMAN: [Inaudible].

13 MR. MARKS: No.

14 MR. FURMAN: May I have my letter back?

15 MR. MARKS: All right. So --

16 MR. FURMAN: Also, if I may?

17 MR. MARKS: So --

18 MR. FURMAN: [Inaudible]. Excuse me.

19 MR. MARKS: I'm --

20 MR. FURMAN: Excuse me. I just want to be certain
21 that the transcript is going to be effectively ordered. Can we
22 order it today because this is a lengthy proceeding?

23 THE COURT: You can order it, yeah.

24 MR. FURMAN: No, because I think one of the more
25 recent appearances, the reason I mention it is I wanted to

1 order the transcript and I was told it didn't come out. So if
2 there's a way of confirming. Because I have not taken or I
3 stopped taking notes some time ago, and I think I'm going to
4 need to refer to the transcript in order to respond to a lot
5 of these things.

6 THE COURT: Okay. Well --

7 MR. FURMAN: We'll order it tomorrow, but --

8 THE COURT: I think to the extent you want to make
9 sure the transcript comes out, I would suggest that everyone
10 sit down and make sure you're talk into the microphones and
11 you'll have a better chance of having a better transcript.

12 MR. MARKS: We've been taking very good notes as
13 well, and we'll be happy to confer as well. And I am sure
14 we'll find a way to work it out. So with respect to the cash
15 transactions, Your Honor, I guess I'd like to propose an
16 amendment to the language which I hope will clarify the issue
17 and maybe address Mr. Furman's concerns is that the revised
18 request read as follows: "All documents relating to any
19 transactions that involved the generation of cash or currency
20 to be used in any way by or for your business and documents
21 reflecting the purpose for which such cash or currency was
22 generated, including but not limited to any transaction with
23 any check cash or any entity which involved the exchange of a
24 check for cash."

25 I think -- phrased that way, I think it addresses

1 the concern that Your Honor identified his focus. I think
2 it's consistent with what Mr. Furman has said he's prepared to
3 provide. And I think the answer may be nothing more than the
4 documents he's already produced, but if that's the answer,
5 that's the answer. So that would be my proposal.

6 MR. FURMAN: And I don't see a difference between
7 that. I'm trying to expedite things here, but I don't see a
8 difference between that and the other -- the initial question.
9 The word "involved" is another elastic term. Before when we
10 were talking, Your Honor asked him a question isn't this what
11 you want, and I think he said yes. And I don't remember what
12 the wording of the question was, and I said that I can respond
13 to. But this other question is just a duplicative one of the
14 other one.

15 [Pause in proceedings.]

16 THE COURT: Repeat your question again.

17 MR. MARKS: So the Court's concern was transactions
18 which generated cash, so transactions generated cash. So what
19 we're -- what I'm proposed is that the transaction involved
20 the generation of cash or currency. In other words, if the
21 transaction itself, the purpose of the transaction was to
22 generate cash or currency, that's why you give the
23 transaction.

24 THE COURT: I don't see how that's any better.

25 MR. FISHER: It's not any better.

1 THE COURT: I mean I guess I have two questions or
2 really one question for you which is are you looking for the
3 check-cashing documents?

4 MR. MARKS: Yes.

5 THE COURT: Or are you looking for what you were
6 talking about before which was transactions where somebody
7 spent the cash that they generated?

8 MR. MARKS: Both, Your Honor.

9 THE COURT: Because I think those are two separate
10 things, and you're trying to conflate them all into one
11 request. And I think that's your problem. I think you really
12 have to break it up into two parts because it's two separate
13 issues.

14 MR. MARKS: Okay. So I'm open to -- well, look,
15 Judge, we can [indiscernible] with the language, but what we
16 want, I assume we're in --

17 THE COURT: But aren't the check-cashing things,
18 wouldn't that be in the bank records or at least the checks
19 made out to cash?

20 MR. MARKS: I assume so. I assume that's
21 everything. But we've got people going to check cashers.
22 Maybe we've got communications with check cashers. Maybe -- I
23 don't know what else there is. Maybe there's nothing else.
24 If that's all there is, that's all there is. What I'm looking
25 -- what we're looking for are the documents associated with

1 the creation of currency, cash. You know, so that's one set.
2 And to the extent that they're engaging in transactions purely
3 that are cash transactions, look, we don't need every scrap of
4 paper, but we need the documents that support the purpose of
5 those transactions.

6 MR. FURMAN: The last portion seems to me I could
7 respond to, documents relating to any cash transactions in the
8 course of your business. Okay, I can live with that. And
9 except for -- you know, except for the checks which I assume
10 -- I haven't looked at every one of the checks and I haven't
11 seen the bank records, but I assume that there are checks that
12 go to cash -- to check cashers. I'm not going to reproduce
13 those. He has them already. In fact, I'd like to know what
14 they are.

15 MR. MARKS: So what I'm hearing is all documents
16 related to cash transactions.

17 MR. FURMAN: Right.

18 MR. MARKS: And documents reflecting the purpose --
19 well, that's what you just said, right?

20 MR. FURMAN: I said any documents referring or
21 involving cash transactions in the course of your business.

22 MR. FISHER: Can I make a suggestion?

23 MR. FURMAN: That's pretty simple.

24 MR. MARKS: Fine. All documents -- fine, that
25 request, fine. Okay, done. And then the other piece of that

1 is all documents reflecting the purpose of such cash
2 transactions or such documents as reflect the purpose of such
3 cash transactions.

4 MR. FURMAN: I think that's where it gets elastic
5 [Ph.].

6 MR. FISHER: Suppose they sent out for lunch and
7 paid for lunch with cash. But does he want to know that? All
8 transactions related to cash.

9 MR. FURMAN: Yeah, I get it.

10 MR. FISHER: It gives you a list of the checks that
11 went through the check casher and say all documents related to
12 these checks.

13 MR. MARKS: Judge, why don't we hear it this way, if
14 he answers that and he produces that, then we'll look at what
15 he produces and if we have specific cash transactions we want
16 to ask about, we'll send him a list of cash transactions and
17 we'll say give us the documents related to these transactions.

18 THE COURT: There you go. Do it that way.

19 MR. FURMAN: All right. That's fine.

20 MR. MARKS: Okay.

21 MR. FISHER: That's fine.

22 MR. MARKS: Okay. All right. Next issue.

23 MR. FURMAN: I'm worried about -- you know, I'm
24 worried about the lunch check. I guess we didn't retain
25 those.

1 MR. FISHER: Well, if they send out for a pizza,
2 they didn't -- they pay in cash, they don't keep a record of
3 that. You know what he's looking for.

4 THE COURT: My dad keeps records for like 15 years.

5 MR. FURMAN: I think I know what he's looking for.

6 THE COURT: Like every receipt he's probably ever
7 had, it's ridiculous.

8 UNIDENTIFIED SPEAKER: They fade after two years.
9 You can't read like --

10 THE COURT: Don't ask me. I don't --

11 MR. MARKS: I keep my condo association deposit
12 receipts and they --

13 THE COURT: I throw out my receipt before I even
14 leave the restaurant.

15 MR. FISHER: I've had a case once, Judge, involving
16 a plumbing contractor. When the DA's office did a sweep on
17 managers of co-ops in condominiums, he got immunity because he
18 had a register of every time he made a payoff to a city
19 employee, where the payoff took place, where they had lunch,
20 how much it was, and what denomination the bills were down to
21 I gave him \$1,156.37 when he counted in lunch. And the DA's
22 office, who does this, but we got an immunity bath.

23 MR. MARKS: Okay. All right, Judge. So let me try
24 and cut this next one short, I'm hoping. So we have a dispute
25 over -- we've asked for documents relating to ownership

1 interests and income that defendants received from other
2 health care businesses, okay. I understand the disagreement.
3 I understand how much time we spent going back and forth.

4 So what I'd like to do is I'd like to propose an
5 alternative to maybe short-circuit this is rather than phrase
6 this as a document request, why don't we -- what I would
7 propose as a solution is that we ask the defendants to simply
8 identify the businesses that they have owned that have engaged
9 in the health care or supply business during the period
10 covered by the complaint, what the businesses that they've
11 owned, the dates that they've owned them, and then we can then
12 have a discussion with counsel over whether we think it
13 appropriate to get more discovery or less discovery about
14 those entities and we can fight about it.

15 But it would seem to be a relatively simple thing
16 for them to identify that list and then we look at the list
17 and then we can fight about whether we're entitled to more or
18 less. I think it would be our position we'd be entitled to
19 more, but at least we can get a universe of what we're --
20 counsel's position is going to be we're not entitled to any of
21 it, but at least we have a universe of what we're talking
22 about. So that's my proposal.

23 MR. FURMAN: Your Honor, this complaint and
24 everything about it and everything that was said today is
25 keyed to the address of 1786 Flatbush. Their whole theory is

1 that there's someone who controls 1786 Flatbush. If I --
2 that's the adjunct non-pled theory.

3 I don't see why other businesses, medical
4 businesses, health care businesses that these doctors are
5 involved in have anything to do with this complaint. He's
6 going to argue, well, that's their motivation. They may be --
7 you know, whatever. I mean, again, it's this elastic concept
8 that makes everything discoverable. And they took pains to
9 limit this to 1786 Flatbush Avenue. And now we want -- now
10 they're asking about other PCs, and they just -- now they're
11 saying they just want those PCs. You know what they're going
12 to do with that.

13 And third of all, I may add, you didn't give them
14 tax -- we didn't give them individual tax returns, and one of
15 the reasons was because it would give personal information
16 about other businesses and other PCs. Now this is just a back
17 door way of just getting the same information. So I think
18 it's in effect been ruled on already. This is just gone just
19 far afield. There isn't anything more imaginable that they
20 could ask for. And I urge you to not compel an answer more
21 than I've given on this and sustain the objection.

22 MR. MARKS: I was hoping that my compromise was
23 going to save us having to address this issue, but apparently
24 it's not. All right. And I'm still going to stand on my
25 offer with the compromise. But here's what this position. I

1 understand the way in which they've hammered away at their
2 view of the complaint but, Your Honor, this is a RICO case,
3 okay, in which we allege that a RICO enterprise, okay, in
4 which all of these defendants together orchestrated a scheme
5 to defraud insurance companies, and they did it.

6 And the scheme in the complaint includes allegations
7 that start all the way back with the provision of care to
8 individuals who have been in staged accidents. The complaint
9 talks about patients who've been in staged accidents and these
10 patients in staged accidents all represented by the same law
11 firm. They end up at this clinic all receiving the same care.
12 And that care carries all the way through to the lawsuits that
13 are filed by the same law firm, and this law firm files these
14 lawsuits to carry on and collect on that.

15 Among the allegations of the complaint is that each
16 one of these individual doctors own a series of different
17 professional corporations, and the complaint specifically
18 alleges that they changed corporations. They changed the name
19 of the corporation again and again and again. And they do
20 this to further the scheme. This is alleged in the complaint
21 in order to hide who's involved and to change it over and to
22 submit a series of fraudulent claims over the life of the
23 scheme.

24 Now at the time that Your Honor limited us to the
25 corporate tax returns and not the individual tax returns, that

1 was when this case just started. That was long before we
2 amassed the significant volume of financial information that
3 we now have about the movement of hundreds of thousands of
4 dollars. Hundreds of thousands of dollars in money that's
5 moved out of these professional corporations operating at 1786
6 down to providers that are associated with we believe the
7 Rybaks down in Florida for reasons that can't be explained.
8 And there are all of these transactions and they're a whole
9 variety of providers and it's all kinds of money moving all
10 over the place in ways that can't be explained. We think we
11 have a reason for it, but we think it's in part to further the
12 scheme, the RICO enterprise, the RICO conspiracy that we have
13 alleged in the complaint. And this is all part and parcel of
14 that story.

15 So, what else did these individuals -- what other
16 professional corporations, what other businesses did they own
17 or operated or were they involved in where money was moved to
18 or where they were -- have a relationship that crossed paths
19 with other members of the RICO enterprise or other parts of
20 this RICO conspiracy that we've alleged because we've seen all
21 this money and all this activity that we've learned about? In
22 fact, at some point soon we're going to be back in front of
23 the Court asking you to reconsider its ruling on allowing us
24 access to the individual defendants' tax returns because of
25 everything that we've learned. Since the time you issued that

1 ruling, you said at least at this point, that was the ruling
2 because it was very early in the case and we know a lot more
3 than we know -- knew then.

4 But let me add this. One of the issues, and let's
5 go back to medical necessity. As the Court correctly
6 observes, medical necessity is one part of the story. But we
7 have a variety -- we have a theory here, and it's a coherent
8 theory, which is that this RICO enterprise, its scheme was to
9 submit claims that represented that these services were
10 medical and necessary when they're not. And so medical
11 necessity's a piece of our story, but it's part of a larger
12 story and a larger theory.

13 So if Provider A is treating his or her patients at
14 1786 one way and is treating his or her patients in another
15 location a different way, okay -- perhaps those patients are
16 not no-fault patients. Perhaps, they're private pay patients.
17 Perhaps, those patients are being treated in a different way.
18 That something that may be arguably relevant would be a
19 comparison that we would be allowed to make.

20 Now I'm not saying we're going to go there, which is
21 why I've offered a compromise, a first step to figure that out
22 is let's see what they are. That's all we're asking. Just
23 give us the list of what they are and then we can decide what
24 is the next step. Now I think we're probably entitled to make
25 this comparison to consider other entities just because of the

1 sheer volume of money that is moving back and forth among
2 these entities and it's a lot of money that's moving back and
3 forth across a lot of entities. If they're writing -- you
4 know, if each one of these professional corporations is
5 writing money to all -- where else is the money going?

6 Case law has held that where individuals have
7 closely-held corporations and there's a free flow of money
8 between and among those entities, that discovery into their
9 other entities is appropriate. So for those reasons --

10 THE COURT: Have you identified other companies that
11 you think these defendants own based on the money transactions
12 that you've identified?

13 MR. MARKS: We -- I don't -- as I stand here, I don't
14 know the answer to that. And I think part of the reason why
15 we -- why we are asking this discovery is to find out if there
16 are other entities. I mean one of the things I think we have
17 found is that we've got a lot of money going to entities that
18 we don't know what they are. So we have records of the money,
19 but we don't know -- it's, you know, ABC entity, XYZ entity
20 and we don't know what those entities are. So some of this
21 may shed light on that. That's the reason to ask the
22 question. Only they're likely to know what entities are
23 there.

24 MR. FISHER: That's a deposition question.

25 MR. MARKS: And the burden of telling us, look, this

1 is our entity -- what conceivable burden are we imposing on
2 them by saying give us a list of your entities? That's all
3 we're asking for at this point. There's no burden from that
4 other than they've got to give us a list of the entities.

5 MR. FURMAN: That's not a question for burden. Your
6 Honor, if I can be heard? The name of the enterprise in this
7 RICO case is the 1786 Flatbush fraudulent treatment
8 enterprise. So everything is keyed to 1786 Flat -- Exhibit 1
9 of the complaint which lists all of the claims are 1789
10 Flatbush treatment. Now they want to speculatively say, well,
11 let's see if they treat people the same way. They have no
12 basis to ask that. That is -- I'm sorry to --

13 THE COURT: Look, I'm not allowing that at all. To
14 the extent that there might be money being shifted between
15 companies, other entities owned by the defendants, you know,
16 that could be potentially relevant. But at this point, I
17 don't know whether there's been any money. You've identified
18 certain companies that have received money. That sounds like
19 you want to know whether the defendants had any connection to
20 them. So I think you need to do it in reverse. I think you
21 need to identify what companies or entities you have these
22 suspicious transactions with and ask the defendants if they
23 have any connection to them.

24 Because otherwise, if they give you an entity and
25 there's no transactions associated with that entity, then

1 you're going to want to look into that entity. And, you know,
2 I don't buy your argument for the comparison at this point. I
3 agree that there's potential relevance to these transactions
4 if there's other entities that they own that are receiving
5 money or moving money. So that's what we're going to focus
6 on. So if there's other entities that you've identified
7 through the financial records, ask them if they have any
8 interest in those entities.

9 MR. MARKS: Okay. All right. Thank you, Your
10 Honor.

11 Okay. The Court says we're not addressing emails at
12 this time. So now we have --

13 THE COURT: It doesn't sound like we needed to
14 address emails.

15 MR. MARKS: Well --

16 THE COURT: We're all on the same page.

17 MR. MARKS: Well, no.

18 MR. FURMAN: Yes, for communications, email
19 communications between the parties defendant. And what I
20 believe you ruled is if you have any, you'll produce them.
21 Okay, other emails is a whole -- that's the electronic
22 discovery issue which --

23 THE COURT: Which he hasn't asked for. What he's
24 asking for us communications that --

25 MR. FURMAN: Well, and I said if --

1 THE COURT: -- you know, would include emails.

2 MR. MARKS: Well, no. So I'm not --

3 THE COURT: Okay. So what's the --

4 MR. MARKS: -- so we've been through document
5 requests. We now have some interrogatories, so I'm now
6 turning to interrogatories. So among the interrogatories that
7 we have asked that counsel that we discussed at the April
8 conference and that he agreed to consider providing amending
9 responses is he was going to provide -- was for phone numbers
10 and emails. I understand we've asked them to identify emails.
11 I understand we're not addressing that issue now. So I'm
12 happy to move on. I just want to just to confirm I'm not
13 addressing that issue now. But I'm not waive -- okay.

14 All right. We've asked the defendants to identify
15 their ownership interest in the defendant entities. We've
16 been told to look at the incorporation documents, but that
17 doesn't answer the subparts of the interrogatory which
18 include, you know, what percent interest do you own, which
19 defendants own the interest, and what are the dates you
20 acquired it, and what did you pay for that interest. Counsel
21 has told us, well, I think it's owned only by this guy and he
22 has a hundred percent ownership and nobody -- that's fine if
23 that's true. But he's got to put it in an answer. We can't
24 have Mr. Furman telling us what he thinks the answer is in a
25 telephone call. So we just simply need that interrogatory

1 responded to in the interrogatory.

2 MR. FURMAN: I don't believe I would have ever said
3 that I would identify how much they paid for it. I'm not even
4 sure that I -- that that information is a sort they did pay
5 for it. If he wants to know that they're a hundred percent
6 owners, I'll put that in writing. I have no idea why he wants
7 to know that because he knows full well that they have a
8 hundred percent.

9 And as far as the corporation is concerned, public
10 record how long they've been in existence.

11 THE COURT: But that doesn't necessarily mean your
12 client owned them.

13 MR. FURMAN: What my client's probably going to do
14 is go on the public record and --

15 THE COURT: Look, if the answer is your client
16 stated the company, owns the company a hundred percent, and
17 it's never changed ownership, then that's a simple answer. I
18 think --

19 MR. FURMAN: Well, that's what -- if he is just to
20 say that, we'll say it.

21 THE COURT: Yeah. I think what he wants to know is
22 are there entities here that, you know, changed ownership.

23 MR. FURMAN: They didn't but I'll put it in writing.
24 I mean they're the initials of the parties.

25 THE COURT: I don't know. And if that's the answer,

1 that's the answer. But --

2 MR. FURMAN: Okay. But this is a waste of time.

3 MR. MARKS: This waste of time, this aw-shucks
4 nonsense is a waste of time. Look, we've asked an
5 interrogatory. It has subparts. What I want, I want them to
6 answer the interrogatory, and I want them to answer the
7 subparts. He said he would. He said he should.

8 MR. FURMAN: No, I didn't say that I would or
9 should.

10 MR. MARKS: He was asked in April of 2018. Why
11 we're here asking him to respond to it, I don't know. But
12 what I'm hearing is I'm asking that the Court -- I'm asking
13 that he answer that interrogatory and its subparts. That's
14 all.

15 THE COURT: Just revise and answer the -- unless you
16 have a specific objection.

17 MR. FURMAN: I'm looking to see what he wrote.

18 [Pause in proceedings.]

19 MR. FURMAN: Well, I'm sure I -- I don't have any
20 problem with the date of the ownership. I mean it's just busy
21 work to say the length of time they maintained their ownership
22 interest. The amount paid or other consideration is not
23 something that -- I object to that. I don't think -- I didn't
24 agree to it and I don't think that's germane to this case in
25 any way.

1 THE COURT: All of these people are a hundred
2 percent owners and they've never changed ownership in the
3 companies.

4 MR. FURMAN: He can have that.

5 THE COURT: But then the answer's going to be they
6 didn't pay for it because they were the ones who started it,
7 so why fight over something that's not an issue?

8 MR. FURMAN: You know what? I didn't realize that.
9 You're right. You're right, Judge. Thank you much. You make
10 a good point. I just didn't think it out.

11 THE COURT: All right. Next?

12 MR. MARKS: Next, we asked an interrogatory for him
13 to identify the individuals who provided services to the
14 defendants. What we were told is go look at the NF-3s which
15 are the bills submitted to State Farm, okay. That is -- those
16 are -- will tell us who provided services to the patients.
17 It's not what we asked. We asked who provided services to the
18 defendants. I want him to answer the interrogatory and its
19 subparts, who provided services to the defendants.

20 He agreed to amend his response. I'm assuming he's
21 going to do that.

22 MR. FURMAN: Well, I don't know that I agreed to
23 amend my response.

24 MR. MARKS: Well, we sent a letter on April 19th
25 which summarized our conversation and we received --

1 MR. FURMAN: And you said if you disagree with any
2 of this 20-page letter, then you'll let us know.

3 MR. MARKS: Right. And you didn't.

4 MR. FURMAN: Okay.

5 THE COURT: Okay.

6 MR. FURMAN: So that was my opportunity to speak to
7 go through a 20-page letter that I didn't even know was coming
8 and, you know, I mean --

9 THE COURT: Just tell me what your objection is.

10 MR. FURMAN: Pardon me.

11 THE COURT: If you have an objection to something,
12 tell me what it is.

13 MR. FURMAN: I have an objection with -- because
14 it's -- I've given this to them. Here's an interrogatory,
15 it's answerable by the documents. I wrote, okay, W-2, tax
16 returns, bank records, okay. They've got it. They want to
17 know who gave services to the defendants. It's their
18 employees. And they may be people identified in the NF-3 who
19 were employees, professional employees who performed the
20 services or they have themselves documents that were submitted
21 with the billing that indicates who performed the services to
22 the patients. So what else is there? Why do I have to answer
23 this?

24 THE COURT: I don't know. Maybe it has something to
25 do with the fact that you have people who are nonparties that

1 are responding to subpoenas saying that they have no
2 connection and then claiming to be employees. Perhaps, that's
3 why they're asking questions like that.

4 MR. FURMAN: Well, I don't think that we're going to
5 identify the woman who cleaned the bathroom either way.

6 MR. MARKS: They haven't identified Deng Glao [Ph.].

7 THE COURT: When you're paying them over \$100,000,
8 perhaps you should have records of who they are.

9 [Pause in proceedings.]

10 MR. FURMAN: Well, if we did, we would give them.
11 We've given them everything that we have.

12 MR. MARKS: No, they haven't. They've given us
13 documents and they have been too lazy to sit down and answer
14 the interrogatory. And that's what they need to. They need
15 to answer the interrogatory.

16 MR. FURMAN: I object to him saying too lazy. If
17 you want to stop pointing fingers about laziness. You opened
18 the door. You don't want me to do that [indiscernible] a
19 three-page motion and a twenty-page letter that's incorporated
20 by reference.

21 MR. MARKS: [Indiscernible].

22 MR. FURMAN: I am nice. I'm not screaming.

23 THE COURT: What is the issue with just giving them
24 a list of whoever -- I mean who provided services is a pretty
25 broad category. Is there anything specific you can narrow it

1 down to?

2 MR. FURMAN: Why doesn't he ask who provided
3 services that are not in the documents you've produced so far?
4 That would be a great question.

5 THE COURT: To actually answer that accurately, you
6 would have to go back and check out what documents you've
7 already produced and identify which people were listed in them
8 and which people weren't. I don't see how that's easier than
9 just sitting down with your client and figuring out a list of
10 people who provided services.

11 MR. MARKS: We were -- identify who was provided
12 management, collection, administrative, secretarial,
13 consulting, legal, marketing, accounting, tax preparation, or
14 scheduling services for any of the defendants and for each
15 state the name, last known address, type of service provided,
16 dates where such services was provided, and the amount paid.
17 It's a pretty standard, straightforward interrogatory.

18 MR. FURMAN: Right. And you got an answer, correct?

19 MR. MARKS: The answer is look at the bills that we
20 submitted to State Farm.

21 MR. FURMAN: No, what was the answer to the
22 interrogatory?

23 [Pause in proceedings.]

24 MR. MARKS: "The answer can be found in documents
25 produced on June 25th." It cannot.

1 MR. FURMAN: That's right. And that would include
2 accountants' names because we produced tax records. I mean it
3 would include -- why don't they just look at the documents
4 that they have.

5 THE COURT: I'm sure they have. What they want to
6 know is whether there's anyone else.

7 MR. FURMAN: Then ask -- then notice a deposition
8 and ask.

9 THE COURT: I don't see why that's a deposition
10 question. Just because something can be asked in a deposition
11 doesn't mean it's an improper question for an interrogatory.
12 Look, you have people claiming to be employees or I guess
13 contractors of defendants receiving large amounts of money. I
14 don't think it's inappropriate for them to ask who else is
15 going to come out of the woodwork claiming they worked for the
16 company.

17 MR. FURMAN: Well, I think anything that they're
18 going to say in response to that is going to come from a
19 document that's been produced.

20 THE COURT: But here's --

21 MR. FURMAN: Just because Ms. Queen does not have a
22 W-2, if that's the case --

23 THE COURT: So what document that you've already
24 produced mentions her name?

25 MR. FURMAN: Well, I can't tell you -- I mean he

1 says --

2 THE COURT: Yeah, because there probably isn't one.

3 MR. FURMAN: -- he says that there isn't any.

4 MR. MARKS: I can tell you that there isn't any.

5 THE COURT: Okay. So right there, if your answer is
6 it's all in the documents, that's not true because you have at
7 least one person who provided services that's not in the
8 documents. So give them a list.

9 MR. FURMAN: Okay.

10 MR. MARKS: So that addresses -- so there are two
11 interrogatories that deal with that issue. One is who
12 provided services, and Interrogatory 7 asks them to identify
13 employees and independent contractors. So I assume address
14 both the same way. Am I correct that we could address both
15 the same?

16 THE COURT: Technically, the employees would be
17 covered by the first question, but --

18 MR. FURMAN: Yeah. Judge, the only thing is about
19 the addresses.

20 THE COURT: I don't think you need to give
21 addresses.

22 MR. FURMAN: Pardon me. Their home addresses?

23 THE COURT: No. At this point, just identify them.

24 MR. FURMAN: Okay.

25 MR. MARKS: The only reason we asked for that

1 information is that we've had, as the Court knows, a hell of a
2 time getting service on people, finding them --

3 THE COURT: First, find out who these people are. I
4 mean you're not going to go serve subpoenas on somebody unless
5 it's, you know -- if it's somebody of interest that you're
6 going to actually subpoena, then ask them for the address.
7 And if you have a fight over it, then we can talk about it,
8 but --

9 MR. MARKS: Okay. All right. The next one is we've
10 asked about billing software. We were told in the
11 interrogatory response that they aren't familiar with the
12 software used for billing, so they don't know anything about
13 it. We've been told in counsel's pleading that he just filed
14 that, of course, State Farms knows they don't have any billing
15 software. But we didn't, I guess, until we got the letter.
16 They just got to answer whatever the answer it.

17 MR. FURMAN: I told them.

18 MR. MARKS: And I don't care what the answer is.
19 Just amend the answer, that's all. . Whatever the answer is,
20 it is.

21 THE COURT: If there's no billing software, just say
22 that.

23 MR. MARKS: Huh?

24 THE COURT: If there's no billing software, just say
25 it.

1 MR. FURMAN: No. As far as he knows or she knows,
2 they don't know.

3 THE COURT: What do you mean they don't know?

4 MR. FURMAN: I mean that doesn't mean there's
5 billing software. I mean do they know the intricacies of how
6 the people are doing? Do they know all that stuff? No,
7 they're doctors. They're not going to look at that
8 information.

9 THE COURT: How does the practice bill?

10 MR. FURMAN: They pay people to do their bills. How
11 do those people do the bills? You have to ask them.

12 THE COURT: Okay. What people?

13 MR. FURMAN: I don't think that they get into that
14 detail. You know, I mean I have to tell you, you know --

15 THE COURT: Who's doing the billing? Is there a
16 third party company?

17 MR. FURMAN: There's no billing -- there's not a
18 billing party.

19 THE COURT: Is the billing -- so who's doing the
20 billing?

21 MR. FURMAN: Pardon me.

22 THE COURT: So who's doing the billing?

23 MR. FURMAN: Their employees. Do you want the names
24 of the --

25 THE COURT: How do you say we don't know? You

1 represent the company.

2 MR. FURMAN: Yeah, I can say -- I can tell who -- I
3 can state who's doing the billing. That wasn't this
4 interrogatory.

5 THE COURT: Yeah. But you represent the company.
6 If you don't personally know the answer, you can go to the
7 employee who works for your client and ask them.

8 MR. FURMAN: Okay.

9 THE COURT: Somebody at the company knows what
10 billing software, if any, they're using. The fact that you
11 don't is not an answer. Somebody in the company knows. You
12 have to ask. The fact that the doctor doesn't know is not an
13 answer, at least with respect to the company. It might be an
14 answer with respect to the individual.

15 MR. FURMAN: Right.

16 THE COURT: But if the company is asked what billing
17 software do you use, there's an answer to that and somebody at
18 the company knows the answer.

19 MR. MARKS: Okay. I think we're getting to the end
20 here, Judge. The next one I think we should have a -- I think
21 we've talked about this, but we've asked them to identify
22 leases and to explain the terms to the extent there aren't
23 documents of all lease agreements. Mr. Furman has told us
24 orally in telephone conversations what he thinks those terms
25 are. We just need them to provide an interrogatory answer

1 that lays out what those terms are. So he needs to answer the
2 interrogatory telling us what the terms are.

3 THE COURT: This is all for leases at that location?

4 MR. MARKS: It's -- yes.

5 THE COURT: Okay.

6 MR. MARKS: It's for --

7 UNIDENTIFIED SPEAKER: [Inaudible].

8 MR. MARKS: Yes, leases spaced to conduct -- it's
9 for lease with space to conduct business and provide health
10 care services.

11 MR. FURMAN: They're asking them how much rent they
12 pay.

13 MR. MARKS: Yes, we are. And we're asking for the
14 terms of the lease.

15 MR. FURMAN: Well, that's a different story.

16 THE COURT: Well, the terms of the lease includes
17 how much they're paying, I would assume.

18 [Pause in proceedings.]

19 MR. MARKS: Look, one of the things he said to us is
20 that what the sublessees pay is random, okay, and it varies
21 from month to month depending on how much money they have
22 around, okay. Now, we're going to argue about whether that's
23 a lease or whether that's payments to somebody who actually
24 controls the location, right, because what's really going on
25 is if one month you pay \$10,000 for your use of space and the

1 next month you pay 50-, when you pay to your landlord how much
2 money you happen to have around, that's in our view not a rent
3 of space. That's the money you pay to someone that controls
4 your space. Therefore, we just need to know what the terms
5 are. They can argue about what they are.

6 But what Mark Furman said to us was he said,
7 "Pavlova says according to him they're random and they vary
8 from month to month based upon how much cash they happen to
9 have around." Okay, if that's the answer, put it in an
10 interrogatory and we'll argue about what it means. But don't
11 just say there's no lease or say there's no agreement or say
12 the terms are 50 bucks a month. We want to know what the
13 terms are. Put the terms of the agreement in and then we'll
14 argue about what those terms mean. They've got their story;
15 we have our story. We're pretty clear about what we think
16 that story means because there's actually case law on what
17 that arrangement means and we'll argue about it, just
18 considered by the New York Supreme Court so we'll talk about
19 it.

20 THE COURT: Just put it into the revised thing.

21 MR. FURMAN: Will do.

22 MR. MARKS: All right. To the extent that we're
23 getting revised interrogatory responses, I assume we'll get
24 them from everybody. One of responses we're getting is David
25 Mariano, P.T., who is a defendant, has said I don't have to

1 respond to interrogatories or document requests because my DM
2 physical therapy entity is not a party to this. That may be
3 true, but that's not a basis for an individual to refuse to
4 answer discovery. You have to answer discovery. You have to
5 provide the information you know. Just because an entity you
6 own isn't a party doesn't mean you don't get to respond. That
7 --

8 THE COURT: No, but it might mean they don't have to
9 produce documents depending on who actually has custody and
10 control of it.

11 MR. FURMAN: But he's an employee of one of the PCs.

12 THE COURT: Okay.

13 MR. FURMAN: That's what he is, a physical therapist
14 is employed by --

15 THE COURT: What's why I said that doesn't mean he
16 doesn't have to answer interrogatories. It just means he
17 might not have to produce documents.

18 MR. FURMAN: Well, I don't know what he's doing. I
19 don't know what he's doing in this case.

20 MR. MARKS: Or he may have to produce documents that
21 are in possession, custody, or control. And it may not be in
22 his possession. He could argue that. But if it's in his
23 possession, custody, and control under the law, he's got to
24 produce it. Fine, but he's got to at least answer.

25 THE COURT: No, I agree.

1 MR. MARKS: Okay. Fine. All right.

2 THE COURT: If the answer is that the documents are
3 not in his custody and control, then that's the answer.

4 MR. MARKS: Fine. Okay. All right.

5 THE COURT: Which if he's an employee and not an
6 owner would be the case.

7 MR. MARKS: Absolutely true. All right. Okay. All
8 right. Just a second.

9 [Pause in proceedings.]

10 MR. MARKS: Okay. Judge, I think there's one final
11 issue, okay.

12 THE COURT: Uh-huh.

13 MR. MARKS: And that is this is a discretionary call
14 that the Court needs to make on the management of discovery
15 and the allegation of expenses associated with costs of
16 reproducing the medical records that are in the possession of
17 1786. And it's a pretty straightforward question that again
18 is completely in the Court's discretion, which is they've got
19 about 80,000 pages worth of documents. We propose that what
20 we do is we send in a highly-regarded internationally-
21 recognized copy service. They pick up small batches of
22 documents, they take them out, they photocopy them, they
23 return them the next day or the day after, okay.

24 They want to say, no, you can't do that. You need
25 to come in. We'll set you up in a room, and you can photocopy

1 them on site and do it that way, okay. Two different ways to
2 do it, okay. We'd be fine. I wouldn't care, but for the fact
3 that we're supposed to be moving fast, okay. It took us
4 months just to get an answer in terms of what the volume was.
5 We finally got an answer on the volume on June 4th. The
6 difference in time and cost is substantial to do versus one
7 way. In fact, it's twice as much and we're talking about
8 five-figure numbers here, okay.

9 So cost substantial and time substantial. Under one
10 version, a version we propose is five business days. Under
11 the version they propose is 29 business days. Those are
12 estimates. So that's about a month and a half of business
13 time. There is as far as we could tell the burden on their
14 side is roughly the same. They've still got to pull the
15 records. They've still got to segregate them out. Burden our
16 side --

17 THE COURT: I'm not so concerned with the burden as
18 much as I am concerned about having original medical records
19 leave the premises. You know, these are not -- for example,
20 these aren't like their business records. These are
21 somebody's medical records, some patient now. You know, you
22 may argue that some of those patients are not legitimate
23 patients, but you know that's yet to be proven and I'm sure
24 there are some that are legitimate patients even if your
25 allegations are proven to be correct.

1 So, you know, I'm a little concerned about having
2 original medical records leave to go to a third party vendor.
3 I would assume that they're professional and nothing
4 untoward's going to happen, but any time you have something
5 leave, you know, the custody of the person that's supposed to
6 maintain custody of them, there's always a chance that things
7 could get lost. And I don't necessarily want to futz with
8 somebody's medical records, the original medical records, you
9 know.

10 If they were, you know, in 2019 like everybody else
11 and had their records saved electronically, we wouldn't have
12 this issue. But if all they have are the original paper
13 records, then I just -- I am --

14 MR. FURMAN: That's all I've ever seen.

15 THE COURT: -- I'm not comfortable ordering them to
16 allow somebody to take the original medical records out of the
17 premises to copy them for that purpose. I understand your
18 concerns and, you know, I'm not unsympathetic to them. But if
19 it was something other than medical records, maybe I would do
20 it. But, you know, these aren't their records. They're
21 really the patient's records.

22 MR. MARKS: Fine then. Okay. Well then, I just --
23 I only ask this then. And I just think that we need to be
24 sensitive in terms of scheduling. So at some point, I'm
25 probably going to be -- have to be back in front of the Court

1 to ask for some modification of scheduling based on this --

2 THE COURT: That's fine, especially for this
3 purpose.

4 MR. MARKS: And we'll have to proceed accordingly,
5 but based on the Court's ruling, that's how we'll proceed and
6 we'll address it at that time.

7 And the only other things that I would mention is
8 that I believe that on the Court's docket is the Les Levine
9 records that [indiscernible]. I remember you have -- I just
10 want to make sure for the record that you have only a sampling
11 which is not all of the records that are responsive to the
12 subpoena. And I believe the way we left it was that you were
13 going to look at a sampling and then essentially give guidance
14 to Mr. Levine of I'm assuming presumably, this looks like it
15 might be privileged, this looks like it might -- in other
16 words, issue some sort of guidance that he could follow in
17 terms of what he does and what he doesn't do when he
18 ultimately complies with his subpoena so that we'll be hanging
19 out there.

20 So, that's --

21 MR. FISHER: And you'll also recall the records
22 assurance, it's all confidential because he was working for me
23 and conducting an investigation under my direction and
24 control. And, therefore, the documents are all privileged.

25 MR. MARKS: I'm not going to start talking about

1 this again. We disagree, but obviously not going to -- we've
2 taken enough of Your Honor's time so I'm not going to burden
3 you with that again other than we disagree.

4 So the only other thing I ask is so to the extent
5 that we have identified things that the professional
6 defendants are going to do, I'd ask that the Court set a date
7 by which those things will be done. I'd like it to be shorter
8 rather than longer because we've been waiting a long time for
9 it, but I'm certainly -- it certainly needs to be a reasonable
10 amount of time because we'd like it to be done and not have to
11 be back here again so --

12 MR. FURMAN: We agree we should not be back here
13 again. However, as Mr. Marks well knows --

14 THE COURT: Give me a date you can do it by.

15 MR. FURMAN: I'm sorry; pardon me.

16 THE COURT: Give me a date that you can do it by.

17 MR. FURMAN: Third week in September.

18 THE COURT: Okay. Give me a realistic date that you
19 can do it by.

20 MR. FURMAN: That is the realistic date, Your Honor.
21 That's how booked I am through at least the beginning of
22 September. I'm not taking a vacation this year because I
23 don't have the time for it. I have -- it's going to take me
24 some time. We're talking about amending 38 sets of papers
25 here, and it didn't take me -- it took me a long time to do

1 all of these sets of interrogatories and I've said that to the
2 Court. I'm just as interested in moving this along, believe
3 it or not. This case has been pending a very long time. But
4 I have to take into account my own personal schedule, and I
5 don't have anyone in my office working on this case with me or
6 willing. Unlike Mr. Marks, I only have one person, so I'd
7 appreciate the consideration.

8 I mean I suppose we could do it the second week in
9 September, the 14th. But I want it to go into September, and
10 I have just arranged yesterday to have a substantial brief due
11 on August 30th. So I'm just -- I'm sorry, but I'm just very
12 booked up.

13 MR. MARKS: Your Honor, I believe we have -- I don't
14 recall. I think we currently have fact discovery cutoff
15 that's in September. That's obviously going to have to be
16 adjusted --

17 UNIDENTIFIED SPEAKER: No, I believe it's October.

18 MR. MARKS: Is it October?

19 THE COURT: I think it's October.

20 MR. MARKS: I'm sorry.

21 THE COURT: That's fine. I think it might be very
22 early October. To the extent -- look, obviously, we're going
23 to have to move things. So why don't you confer and come up
24 with a new schedule and you can propose it because you're
25 still going to have to do all the depositions at this point,

1 so.

2 I'll give you September 13th, but I really don't
3 want to be back here in this. So whatever you have, make sure
4 it's done by September 13th.

5 MR. FURMAN: After spending four hours on this, let
6 me tell you that I have no desire to be back here on this.

7 THE COURT: Not that I don't appreciate seeing all
8 of you, but how about coming back here for a settlement
9 conference or something --

10 MR. FURMAN: Right.

11 THE COURT: -- as opposed to this.

12 MR. FURMAN: I appreciate your judicious rulings
13 today.

14 THE COURT: Until the next time.

15 MR. FURMAN: We will try to be -- we will make every
16 effort to be as cooperative as we can. We normally do
17 cooperate with each other.

18 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

19 MR. MARKS: Yeah. I'll give you whatever you --

20 THE COURT: Just do your best. I understand
21 sometimes parties have [indiscernible].

22 MR. FURMAN: And by the way, I mean, the next
23 skirmish is the Second Circuit with that, so.

24 THE COURT: With what?

25 MR. FURMAN: We're in the Second Circuit on the

1 appeal.

2 THE COURT: Oh, yeah, yeah, yeah.

3 MR. FURMAN: So my reply brief is now due April --
4 August 6th. So I have a lot of State Farm of this case, State
5 Farm.

6 (Proceedings concluded at 3:34 p.m.)

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1 I certify that the foregoing is a court transcript from
2 an electronic sound recording of the proceedings in the above-
3 entitled matter.

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6 Shari Riemer, CET-805

7 Dated: July 21, 2019
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